

CAPTAIN NICHOLAS J. LEWIS
MATTER OF COEYMANS MARINE TOWING, LLC

August 13, 2025
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2	FOR THE EASTERN DISTRICT OF VIRGINIA	2	DEPOSITION OF CAPTAIN NICHOLAS J. LEWIS
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7	TOWING, LLC D/B/A CARVER MARINE	7	CERTIFICATE OF OATH 169
8	TOWING as Owner and Operator of M/T	8	CERTIFICATE OF REPORTER 170
9	Mackenzie Rose, (IMO No. 8968765) her cargo,	9	ERRATA 171
10	engines, boilers, tackle, equipment, apparel, and	10	INDEX OF EXHIBITS
11	appurtenances, etc., in rem, petitioning for	11	COYMANS MARINE TOWINGS EXHIBITS
12	Exoneration from or Limitation of Liability in	12	NO. DESCRIPTION PAGE NO.
13	allision with Norfolk and Portsmouth Belt Line	13	1 Captain's Report of the Tug Mackenzie Rose 168
14	Railroad Company Main Line Railroad Bridge	14	
15	occurring June 15, 2024 in and about the	15	
16	Elizabeth River, Virginia.	16	
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19		19	
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1	APPEARANCES	1	WHEREUPON:
2	JAMES H. RODGERS, ESQUIRE	2	CAPTAIN NICHOLAS J. LEWIS,
3	RACHEL WERNER, ESQUIRE	3	A witness herein, acknowledged having been duly
4	CLYDE & CO US LLP	4	sworn and testified upon his oath as follows:
5	405 Lexington Avenue	5	THE WITNESS: I do.
6	New York, New York 10174	6	DIRECT EXAMINATION
7	212-702-6771	7	BY MR. RODGERS:
8	james.rodgers@clydeco.us	8	Q. Good morning, Captain Lewis. My name is Jim
9	rachel.werner@clydeco.us	9	Rodgers from Clyde & Co. I represent Coeymans Marine
10	Counsel for Coeymans Marine Towing,	10	Towing doing business as Carver Marine Towing as well as
11	LLC d/b/a Carver Marine Towing	11	the vessel Mackenzie Rose.
12	Via Zoom	12	A. Good morning.
13	ZACHARY M. JETT, ESQUIRE	13	Q. Captain Lewis, have you ever been deposed
14	BUTLER WEIHMULLER KATZ, ET AL	14	before?
15	11525 North Community House Road, Suite 300	15	A. Yes.
16	Charlotte, North Carolina 28277	16	Q. Okay. So I'm just going to give you some brief
17	704-543-2321	17	instructions. I'm going to ask you a series of
18	zjett@butler.legal	18	questions. If you don't understand my question, just ask
19	Counsel for Evanston Insurance Company,	19	me to repeat it or rephrase it and I will.
20	a/s/o Norfolk and Portsmouth Belt Line	20	A. Okay.
21	Railroad Company	21	Q. If you need a break, just let me know or let
22	JAMES L. CHAPMAN, ESQUIRE	22	your attorney know and we'll accommodate you for any
23	W. RYAN SNOW, ESQUIRE	23	break at any time during this proceeding. Okay?
24	CRENSHAW, WARE & MARTIN, PLC	24	A. Yes.
25	150 W. Main Street, Suite 1923	25	Q. All right. Thank you. Could you state your

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<p style="text-align: right;">Page 5</p> <p>1 full name and address, your home address for the record?</p> <p>2 A. Nicholas J. Lewis, L-E-W-I-S, 3830 Shady Run</p> <p>3 Road, Melbourne, Florida 32934.</p> <p>4 Q. Thank you. And I understand you're here as one</p> <p>5 of the experts in this case?</p> <p>6 A. Yes.</p> <p>7 Q. Could you tell us who retained you?</p> <p>8 A. Mark Nanavati.</p> <p>9 Q. And do you know what party retained you, who he</p> <p>10 represents?</p> <p>11 A. Evanston Insurance.</p> <p>12 Q. Okay. Are you as an expert testifying on</p> <p>13 behalf of any other party?</p> <p>14 A. Yes. I think Jim Chapman and --</p> <p>15 Q. His client?</p> <p>16 A. Yes.</p> <p>17 Q. Norfolk and Portsmouth Belt Line Railroad</p> <p>18 Company?</p> <p>19 A. Yes, that's Jim Chapman.</p> <p>20 Q. Okay. Jim Chapman is the lawyer for them?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. I just want to go through some</p> <p>23 background questions. Are you ready?</p> <p>24 A. Okay.</p> <p>25 Q. And I have the -- I have your CV which saves a</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. What other licenses did you hold after</p> <p>2 your third mate license?</p> <p>3 A. Master steam and motor, 1600 ton, upon oceans.</p> <p>4 Q. Anything else?</p> <p>5 A. No, that's it. I mean, radar observer and</p> <p>6 stuff like that.</p> <p>7 Q. Okay. Can you describe for us generally what a</p> <p>8 1600 ton master's license would cover, what types of</p> <p>9 vessels?</p> <p>10 A. Tugboats. I mostly worked on tugboats and the</p> <p>11 tonnage was usually much less than 1600 and just usually</p> <p>12 pushed around oil barges.</p> <p>13 Q. Was the 1600 -- the 1600 covered tugboats;</p> <p>14 correct?</p> <p>15 A. Yes, yes.</p> <p>16 Q. Did it cover any other vessel or a certain type</p> <p>17 of vessel?</p> <p>18 A. Anything under 1600 tons I could have been</p> <p>19 captain of.</p> <p>20 Q. Okay. I'm looking at your CV and I just want</p> <p>21 to go over a few things. From 1973 to '74 you worked for</p> <p>22 FW Hartmann?</p> <p>23 A. Yes.</p> <p>24 Q. As a boarding agent?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 6</p> <p>1 lot of time. You graduated from Fort Schuyler?</p> <p>2 A. Yes.</p> <p>3 Q. What year?</p> <p>4 A. 1973.</p> <p>5 Q. Okay. And what was your degree in?</p> <p>6 A. Marine transportation.</p> <p>7 Q. Can you briefly describe what that major</p> <p>8 covers?</p> <p>9 A. It covers all forms of transportation in the</p> <p>10 marine industry, ships, tug boats, barges, charters,</p> <p>11 pretty much covers the whole basis of the whole industry</p> <p>12 as far as maritime goes.</p> <p>13 Q. Okay. After you graduated did you sit for US</p> <p>14 Coast Guard license?</p> <p>15 A. I did that before I graduated, yes.</p> <p>16 Q. And what license did you get at that time?</p> <p>17 A. Third mate, oceans, steam, and motor unlimited.</p> <p>18 Q. So once you got that license you were eligible</p> <p>19 to -- well, you tell me what you were eligible to stand</p> <p>20 watch for generally.</p> <p>21 A. I could stand watch as a third mate on a ship</p> <p>22 and I could stand watch on a tugboat or any vessel</p> <p>23 unlimited tonnage at the time as a third mate.</p> <p>24 Q. Okay. Do you hold a license now?</p> <p>25 A. Not an active one. I'm retired.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Did that include any sea time?</p> <p>2 A. No.</p> <p>3 Q. Okay. 1974 to 1980 you worked for Sun</p> <p>4 Transport, Inc.?</p> <p>5 A. Correct.</p> <p>6 Q. And I note that you put down at different times</p> <p>7 you were captain, chief mate and also a third mate on</p> <p>8 vessels such as coastal tankers and tugs; correct?</p> <p>9 A. Correct.</p> <p>10 Q. On the '74 to 1975 the coastal tankers, do you</p> <p>11 remember what those tankers carried?</p> <p>12 A. Oil, gasoline and oil.</p> <p>13 Q. So and you were the third -- you were on the</p> <p>14 tanker, right, not a tugboat?</p> <p>15 A. Right. The tanker as a third mate.</p> <p>16 Q. Okay. And then the chief mate aboard tugs for</p> <p>17 New England Sun, do you remember that, 1975 to 1977?</p> <p>18 A. Yes.</p> <p>19 Q. And you were is it -- you were transporting oil</p> <p>20 products?</p> <p>21 A. Oil barges, yeah, we moved oil barges.</p> <p>22 Q. Anything else?</p> <p>23 A. No.</p> <p>24 Q. Okay. To your knowledge can a vessel carrying</p> <p>25 oil legally use the autopilot in inland waters?</p>

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<p style="text-align: right;">Page 9</p> <p>1 A. Not in my -- not in my experience.</p> <p>2 Q. And do you know if that's regulated by the CFR</p> <p>3 or some other regulation?</p> <p>4 A. No. It's company -- company -- company manual.</p> <p>5 It's under their direction.</p> <p>6 Q. Okay. You don't know if the CFR prohibits it?</p> <p>7 A. I think the CFR does prohibit it for carrying</p> <p>8 oil, for oil transport.</p> <p>9 Q. You're not sure?</p> <p>10 A. No, I think I'm almost positive.</p> <p>11 Q. Okay. And the CFR we're talking about code of</p> <p>12 federal regulation, right, we're talking the same thing?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know what the CFR states regarding</p> <p>15 autopilot for a vessel carrying oil or hazardous</p> <p>16 material?</p> <p>17 A. If I remember correctly, I think it basically</p> <p>18 says in close quarters situation in inland waters you</p> <p>19 shouldn't be using the autopilot.</p> <p>20 Q. For oil or when you're carrying oil or</p> <p>21 hazardous material?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And to your understanding that's</p> <p>24 prohibiting vessels carrying just oil or hazardous</p> <p>25 material; correct?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Open 90.</p> <p>2 Q. Open 90. Okay. Did you ever go to sea after</p> <p>3 open 90?</p> <p>4 A. Yes.</p> <p>5 Q. On an oil tanker or barge?</p> <p>6 A. Yes. I worked on the oil tankers American</p> <p>7 Progress and Columbia -- Seariver Columbia and Seariver</p> <p>8 American Progress.</p> <p>9 Q. Do you know if the Mackenzie Rose -- well,</p> <p>10 strike that. You understand you're here to offer some</p> <p>11 opinions regarding the Mackenzie Rose and an incident</p> <p>12 that occurred with a railroad bridge on the Elizabeth</p> <p>13 River; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Do you know if the barge, the Mackenzie</p> <p>16 Rose, was pushing or was carrying oil or material,</p> <p>17 hazardous material?</p> <p>18 A. I think it was carrying construction material.</p> <p>19 Q. So it was not carrying oil or hazardous</p> <p>20 material --</p> <p>21 A. No.</p> <p>22 Q. -- to your understanding?</p> <p>23 A. Not to -- yeah, no, it wasn't carrying oil.</p> <p>24 Q. Okay. Do you know the difference between a</p> <p>25 1600 ton master's license and an unlimited master</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Correct.</p> <p>2 Q. Okay. Do you know how far offshore a vessel</p> <p>3 carrying oil or hazardous substance must stay off shore</p> <p>4 to use the autopilot?</p> <p>5 A. Inland I think it was 12 miles. Coastwise goes</p> <p>6 12 miles.</p> <p>7 Q. Is it --</p> <p>8 A. Inland waters is I guess once you get inside</p> <p>9 the sea buoy coming into port.</p> <p>10 Q. Okay. Do you know if at the time you were</p> <p>11 working if the CFR prohibited the use of the autopilot</p> <p>12 within one half mile of the baseline, territorial</p> <p>13 baseline?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you ever use autopilot when you were on a</p> <p>16 tanker with oil and/or hazardous material?</p> <p>17 A. Yes, out at sea.</p> <p>18 Q. And not in inland waters because of the CFR</p> <p>19 prohibition?</p> <p>20 A. Correct.</p> <p>21 Q. At that time were the -- were the tankers</p> <p>22 and/or barges double hulled?</p> <p>23 A. No.</p> <p>24 Q. Do you recall a time when they -- the</p> <p>25 requirement became that they needed to be double hulled?</p>	<p style="text-align: right;">Page 12</p> <p>1 mariner's license?</p> <p>2 A. Well, unlimited master's license covers any</p> <p>3 tonnage anywhere in the world on any kind of ship.</p> <p>4 Q. Okay. I'm looking at your CV if you want to</p> <p>5 refer to it. When you were with Sun Transport between</p> <p>6 1974 and 1980 and between '75 and '77 you state you were</p> <p>7 chief mate aboard Sun Tugs?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have that in front of you?</p> <p>10 A. No.</p> <p>11 Q. All right. Well, in your CV --</p> <p>12 A. Wait a minute, wait a minute, I have it.</p> <p>13 Q. Yeah. It's on page three.</p> <p>14 A. Yeah, I got it.</p> <p>15 Q. Okay. And you say you were transporting oil</p> <p>16 products; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Would those have been in barges?</p> <p>19 A. Yes.</p> <p>20 Q. And you talk about Newark, New Jersey to ports</p> <p>21 along the Atlantic Coast. Can you name the ports that</p> <p>22 you can recall that you pulled into?</p> <p>23 A. On the East Coast?</p> <p>24 Q. Uh-huh.</p> <p>25 A. From Bangor, Maine, down to Richmond, Virginia,</p>

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<p style="text-align: right;">Page 13</p> <p>1 and actually Gulf of Mexico, Florida, Louisiana, all over 2 from Texas to New York. I mean, that's in my career. 3 Sun Transport I went as far south as Norfolk. 4 Q. Did you go to the port in Norfolk? 5 A. Yes. 6 Q. Did you ever sail in the Elizabeth River? 7 A. Yeah. But I don't know if it was the southern 8 branch or the eastern branch, I don't recall. 9 Q. When you received this assignment and saw the 10 facts and the bridge and where it happened, do you recall 11 if you'd ever navigated that area of the Elizabeth River? 12 A. It didn't look familiar because I think it was 13 the eastern branch because I used to go to Colonna's 14 Shipyard and I think that's on the eastern branch. 15 Q. And for Richmond you said you went to Richmond? 16 A. Yes. 17 Q. Was that through the James River or some other 18 way? 19 A. Yes, James River. 20 Q. Okay. And then in 1977 to 1980 you were the 21 youngest chief mate in Sun's history to be promoted to 22 captain? 23 A. Yes. 24 Q. Congratulations. 25 A. Thanks.</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. And just going forward 1981 to '86 I 2 guess you were with Exxon? 3 A. Yes. 4 Q. Coastal and Harbor Tugs 1981 to 1986, were 5 those also for oil shipments? 6 A. Yes. We also docked and undocked ships, but 7 they were all oil ships -- oil tanker ships, oil tankers. 8 Q. So thus far up until '86 from 1974 is it fair 9 to say you were -- when you were on tugs, it would be for 10 towing or pushing oil barges; correct? 11 A. Correct. 12 Q. And due to the regulations at no time when you 13 were in inland waters would you have been using autopilot 14 because of the CFR provision; correct? 15 A. Correct. 16 Q. Now if we go to 1986 Exxon Garden State, you 17 were the lead captain I see? 18 A. Yes. 19 Q. I'm guessing because it's Exxon it was oil or 20 hazardous material? 21 A. Yes, it was oil. 22 Q. Yes? 23 A. Yes, it was oil. 24 Q. Okay. And then '87 to '92 you were on the 25 Exxon Golden State as well as the Barge Exxon 503?</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. You were on board the New England Sun and the 2 Barge Albany Sun, do you see that? 3 A. Yes. 4 Q. And, again, you were transporting oil products, 5 meaning you were on a tug transporting or pushing or 6 pulling barges; correct? 7 A. Correct. 8 Q. And the same question as earlier, which ports 9 do you recall on the East Coast you pulled into? 10 A. Portland, Boston, New Haven, Port Jefferson, 11 New York Harbor in Newport, Newark, south to Baltimore, 12 Norfolk and all the way to Puerto Rico. 13 Q. Okay. In Norfolk would your answer be the same 14 as to the earlier time period when you were chief mate 15 regarding the Elizabeth River and the branch? 16 A. Yes. 17 Q. Okay. Now '80 to '81 you worked for Interstate 18 Towing? 19 A. Correct. 20 Q. And you were chief mate aboard the Tug 21 Clipper -- 22 A. Correct. 23 Q. -- towing barges? Were those oil barges or 24 some other barges? 25 A. Oil barges.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Okay. Just trying to get where it says it. 2 '86. I have '81 and 2006. 3 Q. I'm sorry, it's your page two, 1987 to '92 4 bottom of the page Exxon. 5 A. I got it. I found the page. 6 Q. Yeah. 7 A. I had it over there. 8 Q. Okay. You from different times but the same 9 period were you either the chief mate and/or the captain? 10 A. Yes. 11 Q. Okay. And were those operations also with oil 12 barges? 13 A. Correct. 14 Q. Now in 1992 I see you became a port captain or 15 also known as a fleet supervisor; is that correct? 16 A. Yes. 17 Q. And how long were you a port captain? 18 A. Just about a year. It was a temporary shore 19 assignment. 20 Q. Okay. So during in 1992 when you were fleet 21 supervisor you didn't have any sea time; correct? 22 A. Correct. 23 Q. All right. Let's move forward to 1993 to 2003 24 you said your ocean and harbor tugs you captained all 25 three tugs --</p>

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1 A. Yes.
2 Q. -- in San Francisco?
3 A. Yes.
4 Q. And was that all West Coast steaming?
5 A. Yes.
6 Q. And I assume you lived out there?
7 A. No, commuted every three weeks.
8 Q. Wow. From where?
9 A. Florida. Well, first New York and then Long
10 Island, New York, and then Florida.
11 Q. Okay. What company was that for?
12 A. Seariver, Seariver which was Exxon.
13 Q. Okay. Were those ocean harbor tugs that you
14 were captain of were they oil as well?
15 A. Well, we docked and undocked tankers.
16 Q. Okay. So was it mostly you were working in the
17 harbor or were you out working in the ocean?
18 A. No. It was mostly all harbor work until I took
19 a barge up to Anchorage, Alaska.
20 Q. Okay. And so the ships you were docking they
21 were oil tankers?
22 A. Yes.
23 Q. Okay. And where did you do that?
24 A. We escorted them in from sea to the Anchorage
25 or to docks.

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1 THE COURT REPORTER: Just wait for his question
2 because you're cutting him off and I can't hear him.
3 THE WITNESS: Sorry.
4 BY MR. RODGERS:
5 Q. So when you escorted them in from sea, I'm
6 assuming the same CFR would have applied as far as
7 autopilot?
8 A. No, I was on a light tugboat.
9 Q. Okay. Were you pushing or towing a tanker?
10 A. I was following it. I usually had a line up on
11 the stern. So I was definitely not on autopilot.
12 Q. Were you there more as a safety?
13 A. Yes. It's called an escort tug. And it was a
14 California law going into San Francisco.
15 Q. Okay. So if it loses power you can --
16 A. I can control it. I can at least steer it
17 somehow.
18 Q. Yeah, okay. That makes sense.
19 A. Slow it down so it doesn't hit the Bay Bridge
20 or Alcatraz.
21 Q. Yeah. No, no. I guess by then were the
22 tankers double hulled as well?
23 A. No, not all of them. They weren't double
24 hulled. It was the Valdez and the Long Beach.
25 Q. It was the Valdez before it ran aground?

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1 A. Yes. But that was -- that was before '93
2 because I was out there for about three months. But
3 afterwards it was the Long Beach, the Venetia, the
4 Baytown. What the hell is the name of the other one? It
5 was about three or four ships that they had running on
6 the West Coast up to Alaska, up to Valdez.
7 Q. Right. Did you know Frank Iarossi?
8 A. Sure did. Well, he was my boss.
9 Q. Was he president of Exxon Shipping at the time
10 you knew him or not?
11 A. He was president of Seariver and I think he was
12 there when -- yeah, it was definitely he was Exxon before
13 it changed its name. It changed its name after the
14 Valdez.
15 Q. Did it now?
16 A. Yeah. Well, everybody thought the double Xs
17 stood for money. So that's why they changed the name.
18 They didn't have -- at that time they didn't have a good
19 reputation as Exxon.
20 Q. It wasn't a good day; right?
21 A. No.
22 Q. Did you know Captain Hazelwood?
23 A. I went to the same school. I didn't know him
24 personally, but I knew of him.
25 Q. Were you the same year as he was?

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1 A. No. He was -- he graduated just before I did,
2 I went to school.
3 Q. Okay. Great.
4 MR. JETT: Let him finish.
5 BY MR. RODGERS:
6 Q. Well, it seems that from that -- from then --
7 well, even before that, but up through 2006 you were with
8 Seariver and/or Exxon; right?
9 A. Correct.
10 Q. Okay. So I'm just going to -- I want to go to
11 the first page S/R Everett Barge, S/R New York, do you
12 see that?
13 A. Yes.
14 Q. And could you explain the articulating tug and
15 barge briefly what that is?
16 A. It's a tug that has hydraulic pins that come
17 out from the side of the bow and the barge has a track
18 along the side and your tug, the pins fit into we called
19 it you're in the notch and it fits on to the pins and
20 that's how you stay in the notch. There's no cables
21 anymore. You're not attached by cables or rope and
22 that's how you steer the boat and you stay there up to 20
23 foot seas.
24 The articulating part is the bow of the tug
25 does not touch the notch. So if you're in rough weather,

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Page 21
1 the barge will go down, the tug will go up, you'll sort
2 of rotate and that way you don't break the equipment.
3 That's what the articulating is for. So this is the
4 first tugboat in my life I had a seatbelt.
5 Q. So that's different than the notch system;
6 right?
7 A. Well, it's a notch, but it's a different kind
8 of notch.
9 MR. JETT: You got to let him finish his
10 question.
11 BY MR. RODGERS:
12 Q. And, again, so let's just go quickly from 2000
13 to 2004, all the work you were doing dealt with either
14 oil barges or oil tanks?
15 A. Correct.
16 Q. And tugs as well?
17 A. Yes.
18 Q. Okay. Were you more -- well, trying to figure
19 out were you involved in supervision or management
20 through that time period 2001 to 2004 --
21 A. I was sailing then as the third mate on ships.
22 Q. Huh?
23 A. I sailed as third mate because they got rid --
24 the tugboats were sold.
25 Q. Okay. And then -- okay. You note '81 to 2006

Page 22
1 with the same company. I see. Okay. So then that was
2 originally Exxon and then Seariver Maritime?
3 A. Correct.
4 Q. And 2004 to 2006 it looks like you were on
5 board a tanker?
6 A. Yes.
7 Q. Okay. So is it fair to say your whole career
8 since you started with Exxon and/or Seariver Maritime was
9 dealing with oil tankers and/or oil barges?
10 A. I'd say 95 percent, yes.
11 Q. And then I assume you retired in 2006?
12 A. Correct.
13 Q. Okay. And then 2009 to present you've been
14 doing what you're doing today; right?
15 A. Yes.
16 Q. All right. So the last time you sailed on your
17 license was it as a captain or third mate?
18 A. Third mate.
19 Q. And when was the last time you actually sailed
20 before you retired?
21 A. I retired September '06 so I was sailing in
22 August of '06.
23 Q. Until 2006?
24 A. Yes.
25 Q. Okay. Now throughout your career did you have

Page 23
1 any continuing education with regards to your US Coast
2 Guard license?
3 A. We had a lot of training as far as with
4 electronics. When I was doing tractor towing -- I mean,
5 escort towing we used to go on tractor tugs and learn
6 that because we started getting tractor tugs and all
7 sorts of firefighting, bridge resource management. I
8 think I have it.
9 Q. Is it listed?
10 A. Yes.
11 Q. Okay. All right. I see. When you go to your
12 education after Schuyler on page four, are those the list
13 of training is that all related to your Coast Guard
14 license?
15 A. Yes. Some to maintain it, some to renew it.
16 Q. Are there any things in that -- on that list
17 that have to do with requirements by Exxon/Seariver?
18 A. Well, they were all their requirements as far
19 as well as the Coast Guards.
20 Q. Okay. Now when you said electronics that you
21 had some training, could you just describe what types of
22 electronics?
23 A. The ECDIS, the electronic chart display and
24 information system.
25 Q. Uh-huh.

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1 A. Would show the chart on a screen and it was
2 coordinated with autopilot, radar, GPS, so you knew
3 exactly where you were. AIS later on came in and it
4 showed you everything that you were looking forward at
5 and also what was coming at you or, you know, what was
6 nearby you.
7 Q. Now did you take any specific training for
8 autopilot with regards to electronics?
9 A. I'm trying. I don't think I -- a specific
10 autopilot training I don't -- no, I don't recall.
11 Q. Did you ever receive any specific training
12 since your Port Schuyler days with the use of autopilot
13 as a bridge watch standard?
14 A. Yes. That was part of the Bridge Resource
15 Management course.
16 Q. Is that on this list?
17 A. Yes. ARPA and Bridge Resource Management.
18 Q. Okay. And when did you take that, if you
19 recall?
20 A. Probably sometime in the 90s.
21 Q. Okay. Do you recall -- were they training you
22 on -- when you went to that, where was that course?
23 A. San Diego.
24 Q. And do you recall what type of autopilot they
25 trained you on, like what model or what company?

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1 A. No, I don't recall.
2 Q. Okay. Now your professional credentials beyond
3 your licenses I see radar observer. Can you just briefly
4 describe what that is?
5 A. To get your license you have to be a radar
6 observer. A radar observer means you know how to look at
7 a radar and you know how to plot. If something is coming
8 at you, you know, if you have to change course or do
9 whatever, do what's necessary to avoid collision.
10 And it's a test, you take a test. It's like a
11 one day course. You take it at one of the nautical
12 schools. And I usually took it down in Ft. Lauderdale.
13 I don't remember -- Professional Maritime it was called
14 and it was just so you showed your proficiency in using
15 the radar and knowing how to avoid a collision.
16 Q. Okay. Now at Port Schuyler did you have
17 midshipman summers like cruises?
18 A. Yes, three.
19 Q. I take it you were trained on Moboard, how to
20 use that?
21 A. On what?
22 Q. Moboard.
23 A. What's Moboard?
24 Q. Charting.
25 A. Oh, yes, yes, definitely. And autopilot with

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1 that also.
2 Q. So on the chart, the navigation chart you
3 started with what I call Moboard, you know, with the
4 parallel?
5 A. Yeah, parallel rulers.
6 Q. Did that end at some time where you didn't need
7 to do that?
8 A. Well, they don't have paper charts anymore.
9 Q. So it's all like Satnav or --
10 A. It's all done electronically. Yeah, it's all
11 done electronically now.
12 MR. JETT: You got to let him finish his
13 question.
14 BY MR. RODGERS:
15 Q. Okay. If we could get to page -- I don't know
16 what page it is, it's one of one, but it's actually four
17 or five pages in. It's the cases you worked on.
18 A. Okay, okay.
19 Q. Do you have that?
20 A. Yes.
21 Q. In 2019 you worked on Daniel Pacelli versus
22 Vane Line Bunkering. Do you see that?
23 A. Yes.
24 Q. Who were you retained by for that case?
25 A. What the heck was his name? I don't remember

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1 his name.
2 Q. Was it a defendant?
3 A. Yeah. I was for Pacelli.
4 Q. It says Bunkering. Was it like an oil barge or
5 tug or what was it?
6 A. Vane Line Bunker was a barge company.
7 Mr. Pacelli got hurt while loading -- after loading an
8 oil barge in Newark, New Jersey.
9 Q. So it was a longshoreman case?
10 A. No, he was -- he was a tanker man.
11 Q. Oh, he was a crew member. Okay. So but that
12 had nothing -- is it fair to say that didn't involve a
13 tug as far as the case itself?
14 A. No, it did not.
15 Q. Okay. And then if you go to 9/24/20, 2020 I
16 guess, Specialist and Other Vessel Owner Limitation
17 Actions. Do you see that with the Tappan Zee?
18 A. Yes.
19 Q. I assume that dealt with the new Tappan Zee
20 Bridge?
21 A. Yes, during the construction.
22 Q. And was that case an injury case?
23 A. That was a death case and injury and the vessel
24 sinking.
25 Q. Okay. Oh, is that when somebody fell between

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1 the vessels?
2 A. No. What happened was the tug was towing a
3 crane barge, a big crane barge for weeks and he got one
4 helper tug and there was a big crane working on the
5 bridge by the opening of the bridge where the channel was
6 with all sorts of marked buoys. And the tug operator ran
7 the tug and the barge and everything into that other
8 crane. By doing so the tugboat he was on sunk and the
9 three men aboard passed, you know, they died.
10 Q. Yeah. That sounds familiar. That case.
11 A. It was a big one.
12 Q. And who did you -- who were you retained by,
13 which party, the tug or the barge or somebody else?
14 A. Tappan Zee Bridge Company.
15 Q. Oh, the bridge company. Okay. The Mario Cuomo
16 Bridge?
17 A. That's what it's called now.
18 Q. Okay. So far; right?
19 A. Yeah. He'll keep his name there. I don't
20 think his son would.
21 Q. The next one 11/06/2020 Trollinger versus Space
22 Exploration, do you see that?
23 A. Yes.
24 Q. Do you recall what type of case that was?
25 A. An injury case. Steve Trollinger I

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<p style="text-align: right;">Page 29</p> <p>1 represented, he was the person injured. It was against 2 Elon Musk. Trollinger was an engineer when he was 3 first -- when Musk was first doing the -- landing the 4 rockets on the barges. 5 Q. Yeah. 6 A. Well, this was out in California. And what 7 happened was one of the rockets landed and blew up is the 8 beginning stages. And the engineers went out on the 9 barge afterwards to check it out, see what happened, see 10 what they could do, put out fires. And when they were 11 getting off the vessel to go on to a tugboat, Steve 12 Trollinger got caught between the tug and the barge and 13 lost his leg. 14 Q. His leg? 15 A. Yes. The lower part of his leg. 16 Q. So you did that by zoom from Melbourne? 17 A. No. I actually -- I'm trying to think where we 18 did that. I think I went to California. 19 Q. Okay. It says via zoom meeting Melbourne. 20 A. Oh, it does say. Oh, okay. 21 Q. Is that where you're from, that area? 22 A. Yes. 23 Q. So I guess you go out now and you can see the 24 actual launches; right? 25 A. Oh, right out my window.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. No. It was Martinez, it was the Martinez 2 family. 3 Q. Oh, it was the plaintiff? 4 A. Yes. 5 Q. Okay. And then 2024 Zachary Latiolais versus 6 Seabulk, who retained you in this case? 7 A. Zachary Latiolais. He was an injured 8 plaintiff. 9 Q. Was that on a tug? 10 A. Yes. 11 Q. Okay. And so these are the cases before this 12 case that you've been retained for; right? 13 A. And I was deposed for, yes. 14 Q. Okay. And is it fair to say none of these have 15 to do with an allision or an alleged allision? 16 A. No. Well, yeah, the Tappan Zee Bridge does. 17 Q. So the Tappan Zee, the personal injury case? 18 A. Yes. 19 Q. So they hit -- what did they do again? They 20 hit the bridge? 21 A. No. They hit the crane that was working on the 22 bridge that was attached, you know, it was secured to the 23 outer I guess it would be the west side abutment of the 24 new bridge. 25 Q. Okay. Okay. So it wasn't a bridge, it was</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. Yeah. They're pretty crazy. 2 A. It's like twice a week. It's unbelievable. 3 Q. Yeah, I seen them from Sebastian. 4 A. It's unbelievable. 5 Q. It's amazing. Okay. So now the next case 6 December of 2023? 7 A. Yes. 8 Q. Martina Garza, that's against Great Lakes 9 Dredge & Dock? 10 A. Yes. 11 Q. What kind of case was that briefly? 12 A. Great Lakes Tug & Barge had brought a barge 13 into -- had brought a tug and barge into like a shipyard 14 area. I'm trying to think of the location. If I'm not 15 mistaken, I think it was -- I forget the exact location. 16 But what happened was the -- to tie up the tugboat to the 17 dock there was no one on the dock to take a line for the 18 barge or the tug. So one of the deckhands went ashore, 19 went on the equipment to look for somebody, they found 20 nobody. Him and the captain cut off the tug to go see if 21 they could find somebody to get help and the captain fell 22 into one of these big holes that was on the barge and -- 23 dredge barge and he died. 24 Q. And who did you get retained by, what party? 25 Or was it Great Lakes?</p>	<p style="text-align: right;">Page 32</p> <p>1 a -- 2 A. It was basically a dredge hitting it. 3 Q. Was it spudded down, the barge? 4 A. It was spudded down and it was secured to other 5 barges and there was a whole conglomeration of equipment 6 there. 7 Q. Okay. So in your opinion that's an allision 8 because it was spudded down; right? 9 A. Yes. 10 Q. Okay. So, again, the question I'll ask you a 11 different way. Did any of these cases involve an 12 allision with a permanent structure such as a bridge or a 13 dock or a pier? 14 A. No. 15 Q. Okay. All right. You okay? Do you need a 16 break or you okay? 17 A. No, I'm good. 18 Q. So it took me a while, but I guess we'll get to 19 your retention here. Do you recall when you were 20 retained by Mr. Nanavati what specifically he asked you 21 to do? 22 A. To report on the allision with the Belt Line 23 Bridge. 24 Q. Did he say it was an allision or was that just 25 a term you're using for the case?</p>

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1 A. No. I think -- I think it was presented that
2 way. It was tug and barge hit a bridge.
3 Q. You understand -- is it your understanding that
4 at some point the barge made contact with the bridge?
5 A. Yes.
6 Q. Is that your understanding?
7 A. Yes.
8 Q. And which bridge do you understand was struck
9 by the barge?
10 A. The Belt Line Bridge.
11 Q. Okay. Did you -- did you inspect that bridge?
12 A. No.
13 Q. Okay. Did you go to the area where the
14 incident happened?
15 A. No.
16 Q. And as far as your memory is when you did
17 transit the Elizabeth River, you don't recall whether you
18 transited the southern branch where the bridge is?
19 A. Correct.
20 Q. Okay. And, again, based on your recollection
21 and testimony earlier when you looked at the materials,
22 it refreshed your recollection that you had transited
23 that area; correct?
24 A. Correct.
25 Q. Is it fair to say whatever part of the

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1 Elizabeth River you transited during your career, it
2 would have been on a tug pushing or pulling an oil barge?
3 A. Yes. I think it would have been a light
4 tugboat too going to the shipyard.
5 Q. But with an oil barge; correct?
6 A. I don't recall having a barge.
7 Q. What were you doing in the Elizabeth River with
8 a tug?
9 A. Getting it fixed at Colonna Shipyard.
10 Q. And where was it fixed, Colonna?
11 A. Colonna Shipyard. I think it was the eastern
12 branch, but I don't remember.
13 Q. Is that the only time you transited the
14 Elizabeth River to bring a tug to a yard?
15 A. Yes.
16 Q. Okay. So just to state the obvious, during
17 your career you never pushed or towed a barge up or down
18 the Elizabeth River, is that fair to say?
19 A. Not that I can recall.
20 Q. Okay. If you can look at page one of your
21 report.
22 A. Okay.
23 Q. The second paragraph it says of your report:
24 "The purpose of my investigation was to determine if the
25 action/inaction of the Captain aboard the Tug Mackenzie

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1 Rose and the owners of the tug, Coeymans Marine Towing,
2 LLC and Harbor Marine Towing, LLC, hereinafter Coeymans
3 Carver, created unreasonably dangerous conditions that
4 caused the allision with the bridge." Do you see that?
5 A. Yes.
6 Q. When you say the captain, you talking about
7 Captain Miller or are you talking about Mate Morrissey?
8 A. Mate Morrissey.
9 Q. Okay. And when you're talking about the
10 owners, who are you referring to? What does that cover
11 as far as what you were doing?
12 A. Well, it was mostly covering -- Carbon Marine
13 was in charge of the vessel at the time of the incident.
14 But Coeymans -- I think Carver -- Coeymans owned it and
15 Carver operated it. I think that's how it works.
16 Q. Well, even if it doesn't, I'm not asking you
17 that. So, you know, I'm not asking whether you know that
18 or not.
19 A. Uh-huh.
20 Q. But the charter to you was, whether it was
21 Coeymans or Carver, is the company not some person in the
22 company, is that -- is that what you're talking about?
23 A. Yes.
24 Q. Okay. Did you read the deposition of Nick
25 Laraway?

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1 A. Yes.
2 Q. Do you understand what his position was at the
3 time of the incident, his position at Carver?
4 A. Yes.
5 Q. And what was it?
6 A. Executive -- executive manager, something to
7 that effect. He like did operations, some kind of --
8 something to do with operations.
9 Q. And when you say unreasonably dangerous
10 conditions that caused the allision. Do you see that?
11 A. Yes.
12 Q. And is that an either/or, either caused by Mate
13 Morrissey or caused in a different way by the company?
14 A. I'd say by both.
15 Q. Okay. And so you weren't -- is it fair to say
16 you weren't asked to determine if the actions or
17 inactions of Captain Miller were unreasonably dangerous,
18 is that fair to say?
19 A. Yeah. I should have put Morrissey there, but
20 he was a captain, I guess that's why.
21 Q. Yes, yes, you're correct. He was licensed as a
22 captain, but acting at the time as a mate; correct?
23 A. Correct.
24 Q. So you were not asked to assess the conduct of
25 Captain Miller, the acting captain on the tug, is that

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<p style="text-align: right;">Page 37</p> <p>1 fair to say?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Before we get through your report, did</p> <p>4 you determine what Mate Morrissey did in your opinion</p> <p>5 that caused the incident or did not do?</p> <p>6 A. He hit a bridge. I mean, hit the bridge on the</p> <p>7 wrong side of the channel with a tug and barge.</p> <p>8 Q. Yeah, I understand that. But did you determine</p> <p>9 what he did or did not do which caused that?</p> <p>10 A. Well, from what he says he lost -- the vessel</p> <p>11 went hard left while he was steering on autopilot. When</p> <p>12 he switched over, he didn't switch over properly and the</p> <p>13 vessel kept going off course. And he finally got it</p> <p>14 switched over and headed straight ahead, but he didn't</p> <p>15 head for the opening of the bridge. He headed for the I</p> <p>16 guess that would be the east side, south side of the</p> <p>17 bridge -- west side, was that west side of the bridge</p> <p>18 outside the channel, outside the center of the draw where</p> <p>19 the bridge opening was.</p> <p>20 Q. Well, if you go to your page 12 under findings.</p> <p>21 A. Uh-huh.</p> <p>22 Q. And number four could you just read that into</p> <p>23 the record?</p> <p>24 A. "The Officer of the Watch Captain James</p> <p>25 Morrissey failed to properly disengage the autopilot and</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. And what are the two steps?</p> <p>3 A. It's on, you switch over to non-follow-up and</p> <p>4 you have non-follow-up and you start steering with the</p> <p>5 stick, the joystick.</p> <p>6 Q. And so based on your review of the documents</p> <p>7 and the evidence that we're giving to you that are a part</p> <p>8 of this lawsuit -- strike that. Let me rephrase that.</p> <p>9 Are you familiar with that two step process as</p> <p>10 a tugboat captain?</p> <p>11 A. Switching from autopilot to hand steering?</p> <p>12 Q. Yeah.</p> <p>13 A. Yeah, very familiar.</p> <p>14 Q. And in the systems you've used is it similar</p> <p>15 the same where you first press a button for standby and</p> <p>16 then you turn the switch to the NFU new mode?</p> <p>17 A. No. When I had automatic pilot, it was just a</p> <p>18 switch.</p> <p>19 Q. Okay. But you understood this system just</p> <p>20 based on what you reviewed?</p> <p>21 A. Yes. And looking at the manual.</p> <p>22 Q. Was you press the standby button; right?</p> <p>23 A. Yes.</p> <p>24 Q. And then you turn the switch; correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 38</p> <p>1 did not switch to manual steering (non-follow-up mode) in</p> <p>2 a confined navigational channel, resulting in a loss of</p> <p>3 directional control."</p> <p>4 Q. Okay. Now having read your finding in the</p> <p>5 report, is that what you believe Mate Morrissey failed to</p> <p>6 do?</p> <p>7 A. That's what his statement says.</p> <p>8 Q. Okay. And you agree it doesn't say anything</p> <p>9 about the rudder going hard over; correct?</p> <p>10 A. No, not -- yeah. In the beginning it did on</p> <p>11 the first report and then afterwards it was like it</p> <p>12 didn't say he went hard left.</p> <p>13 Q. Afterwards he changed his mind, didn't he?</p> <p>14 A. Yes.</p> <p>15 Q. He actually changed -- I shouldn't say his</p> <p>16 mind, he changed his story; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And his story, would you agree, is at least let</p> <p>19 me get to the page again, sorry, if you go to four again,</p> <p>20 paragraph four, excuse me, paragraph four, page 12, would</p> <p>21 you agree that your -- one of your findings is consistent</p> <p>22 with his later story; correct?</p> <p>23 A. Yes.</p> <p>24 Q. Are you familiar with the two steps for that</p> <p>25 system necessary to engage and disengage the autopilot?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And your review of documents and his later</p> <p>2 statement concluded that either he didn't do both, press</p> <p>3 the button or turn the switch or he pressed the button</p> <p>4 and didn't turn the switch; right? One of those?</p> <p>5 A. Yeah. He did something wrong.</p> <p>6 Q. Okay. And so based on the later statement when</p> <p>7 he finally fessed up I guess is the term he didn't -- the</p> <p>8 rudder didn't go hard over as far as your review, right,</p> <p>9 when you reviewed all the documents; is that fair to say?</p> <p>10 A. Yes.</p> <p>11 MR. JETT: Object to the form.</p> <p>12 BY MR. RODGERS:</p> <p>13 Q. And did you also review the Rose Point data,</p> <p>14 you know, the computer track?</p> <p>15 A. Yes.</p> <p>16 Q. And would you agree that it does not on its</p> <p>17 face show the track going hard left at all, it shows a</p> <p>18 gradual movement to the left; correct?</p> <p>19 A. Correct.</p> <p>20 Q. So if as a tug captain and as an expert</p> <p>21 reviewing that, would you agree supports his later story</p> <p>22 as opposed to his first story which was the rudder went</p> <p>23 hard left?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And is that -- have you ever dealt with</p>

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<p>Page 41</p> <p>1 the Rose Point system or that type of tracking system?</p> <p>2 A. No.</p> <p>3 Q. Not at all? Like not in a different form, a</p> <p>4 different company, something?</p> <p>5 A. No. I've been on vessels where I've seen it</p> <p>6 work and operate, but I -- my career ended before it came</p> <p>7 into existence.</p> <p>8 Q. Your what?</p> <p>9 A. It didn't -- it wasn't there when I was working</p> <p>10 on the vessels.</p> <p>11 Q. Okay. Was there some other type of system that</p> <p>12 tugs used that reported the course and speed so it could</p> <p>13 be looked at later?</p> <p>14 A. Yeah. We had the automatic chart.</p> <p>15 Q. Okay.</p> <p>16 A. For navigation and it was attached to your GPS</p> <p>17 and radar. That's what we had and it did keep a record.</p> <p>18 Q. So in your opinion the Rose Point data that you</p> <p>19 saw on that system, is that more or less a newer version</p> <p>20 of the system you used?</p> <p>21 A. Yes.</p> <p>22 Q. In your review of the documents did you find</p> <p>23 any evidence that Captain Miller was on the bridge at the</p> <p>24 time of the incident?</p> <p>25 A. No.</p>	<p>Page 43</p> <p>1 the last page, the findings.</p> <p>2 A. Yep.</p> <p>3 Q. After you received all the documents, including</p> <p>4 the information showing that Mr. Morrissey's first</p> <p>5 statement to the captain was not true and also your</p> <p>6 other -- well, it's not a good question.</p> <p>7 You first indicate -- it was first indicated</p> <p>8 that based on his initial statement the rudder had -- the</p> <p>9 autopilot had failed and the rudder had gone hard over;</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. After reviewing the later documentation, which</p> <p>13 would include the Rose Point and the later statements by</p> <p>14 Mr. Morrissey, you would agree as you sit here today that</p> <p>15 the autopilot did not fail; correct?</p> <p>16 MR. JETT: Object to the form.</p> <p>17 BY MR. RODGERS:</p> <p>18 Q. At that time, at that time.</p> <p>19 MR. JETT: Same objection.</p> <p>20 A. I can't say because I don't know how he</p> <p>21 switched over or what he did.</p> <p>22 BY MR. RODGERS:</p> <p>23 Q. Okay. Well, it didn't fail --</p> <p>24 A. I don't know --</p> <p>25 Q. Okay. Go ahead.</p>
<p>Page 42</p> <p>1 Q. And, in fact, he was down below; correct?</p> <p>2 A. Sleeping in his bunk.</p> <p>3 Q. And would you agree that based on at least the</p> <p>4 initial statements of all the crew members that there</p> <p>5 were no other witnesses to the incident other than James</p> <p>6 Morrissey?</p> <p>7 A. I would.</p> <p>8 Q. When I say the incident, I mean, leading up to</p> <p>9 the barge striking the bridge and then backing down back</p> <p>10 into the channel. Would you agree at that period of time</p> <p>11 there were no other witnesses other than James Morrissey?</p> <p>12 A. Well, I think the captain came up after they</p> <p>13 hit the bridge and he might have been there when he</p> <p>14 backed out and cleared up.</p> <p>15 Q. You're not sure?</p> <p>16 A. No.</p> <p>17 Q. Okay. But if we went -- we could just go back</p> <p>18 to his statement and see; right?</p> <p>19 A. Correct.</p> <p>20 Q. And you agree though at the time leading up to</p> <p>21 the incident and then the incident itself, the striking</p> <p>22 of the barge hitting the bridge, the only witness was</p> <p>23 James Morrissey?</p> <p>24 A. Yes.</p> <p>25 Q. If you go to your paragraph 13 of your report,</p>	<p>Page 44</p> <p>1 A. I can't say he didn't because, you know, I</p> <p>2 don't know what -- I don't really know what happened</p> <p>3 there.</p> <p>4 Q. Okay.</p> <p>5 A. Nothing is clear.</p> <p>6 Q. But you can agree with me that the vessel</p> <p>7 didn't go hard over; right?</p> <p>8 A. Yes.</p> <p>9 Q. So you can agree with me that the portion of</p> <p>10 whatever first statement he made where the autopilot</p> <p>11 failed and the vessel went hard over is not true;</p> <p>12 correct?</p> <p>13 MR. JETT: Objection.</p> <p>14 A. That it went hard over, no. The autopilot did</p> <p>15 something because when he changed over to the hand, to</p> <p>16 the NFU, he continued on the course he was on and for</p> <p>17 some reason hit the bridge.</p> <p>18 BY MR. RODGERS:</p> <p>19 Q. So --</p> <p>20 A. Don't know whether he was on autopilot or hand</p> <p>21 pilot at that time.</p> <p>22 Q. Well --</p> <p>23 A. He was trying to switch it over.</p> <p>24 Q. Well, your paragraph four says that he failed</p> <p>25 to disengage the autopilot.</p>

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<p style="text-align: right;">Page 45</p> <p>1 A. Well, that's what he first -- what he says.</p> <p>2 Q. It didn't -- it doesn't say the autopilot that</p> <p>3 he properly disengaged it; correct? It doesn't say --</p> <p>4 your conclusion is not that he properly disengaged it but</p> <p>5 the autopilot just didn't work. Your statement is: "The</p> <p>6 Officer of the Watch Captain James Morrissey failed to</p> <p>7 properly disengage the autopilot and did not switch to</p> <p>8 manual steering (non-follow-up mode)." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. That's your finding on that issue; correct?</p> <p>11 A. And I agree with it.</p> <p>12 Q. Okay. And it's not that he switched over</p> <p>13 properly, he did all the steps, but the autopilot didn't</p> <p>14 work, that was not your finding; correct?</p> <p>15 MR. JETT: Objection, form.</p> <p>16 A. Say that again.</p> <p>17 BY MR. RODGERS:</p> <p>18 Q. No. Withdraw that. I'll just stay with the</p> <p>19 last answer, Captain Lewis.</p> <p>20 A. Okay.</p> <p>21 Q. The other part of the section four is you say</p> <p>22 in a confined navigational channel. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Can you -- can you explain to all of us what</p> <p>25 you believe a confined navigational channel is?</p>	<p style="text-align: right;">Page 47</p> <p>1 to me is rivers, channels coming in and out of port. I</p> <p>2 think a restricted channel is probably determined by the</p> <p>3 Coast Guard or military service or somebody.</p> <p>4 BY MR. RODGERS:</p> <p>5 Q. Okay. So, well, for instance, if you're in --</p> <p>6 if you're in a channel coming into a port and you're a</p> <p>7 large oil tanker, there's not a lot of room to maneuver;</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. That's restricted; right?</p> <p>11 A. Yeah. Restricted in your ability to maneuver.</p> <p>12 Q. But if you're on a small yacht in the same</p> <p>13 channel, you're not in restricted waters regarding your</p> <p>14 vessel; correct? Because you have -- you can maneuver;</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And the same with this river, I</p> <p>18 understand this river is near either a naval shipyard or</p> <p>19 a naval base; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And if you look at the bridge, the railroad</p> <p>22 bridge, I think it's 142 feet high when it's -- when it's</p> <p>23 open or lifted?</p> <p>24 A. Yes.</p> <p>25 Q. And what was it -- would you agree I mean just</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Whenever you're in a river, bridges, going</p> <p>2 through bridges, that to me is a confined channel</p> <p>3 irregardless of the width.</p> <p>4 Q. In other words, you're not out at sea; correct?</p> <p>5 A. You're not at sea, but you're in a river</p> <p>6 transiting a river.</p> <p>7 Q. Okay. Do you know the difference between</p> <p>8 confined navigational channel and restricted waters, if</p> <p>9 any?</p> <p>10 A. Yeah. Restricted waters or confined space --</p> <p>11 actually it's pretty much the same. Restricted waters --</p> <p>12 Q. I mean, you're an expert, I need an answer.</p> <p>13 Are they different or are they the same?</p> <p>14 A. Ask the question again.</p> <p>15 Q. I'm not too much younger than you so my memory</p> <p>16 is not too great. So I'm going ask the reporter to read</p> <p>17 it.</p> <p>18 A. That's fine.</p> <p>19 (The question was read back.)</p> <p>20 A. I would say basically they're both -- a</p> <p>21 confined navigation channel and a restricted channel are</p> <p>22 pretty much the same. Restricted might be limiting what</p> <p>23 kind of vessel you are or other kinds of differences.</p> <p>24 But a restricted channel says say you're a Navy vessel or</p> <p>25 stuff, you can't go there. Confined navigational channel</p>	<p style="text-align: right;">Page 48</p> <p>1 from your review is that about what it's at?</p> <p>2 A. Yes. And it's 300 foot wide.</p> <p>3 Q. That's pretty large; right?</p> <p>4 MR. JETT: Objection.</p> <p>5 A. Yeah, it's large.</p> <p>6 BY MR. RODGERS:</p> <p>7 Q. And perhaps, you have to ask the railroad, but</p> <p>8 it's that kind of room is from time to time they have to</p> <p>9 bring naval vessels through that waterway; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And you would agree that let's say -- you would</p> <p>12 agree that the size of a tug and the barge, these size of</p> <p>13 the Mackenzie Rose and the barge is no where near the</p> <p>14 size of say an aircraft carrier; correct?</p> <p>15 A. No.</p> <p>16 Q. Or a heavy cruiser?</p> <p>17 A. Correct.</p> <p>18 Q. Or an oil tanker?</p> <p>19 A. Correct.</p> <p>20 Q. So would you agree that the Mackenzie Rose and</p> <p>21 the barge on the Elizabeth River where it was at, where</p> <p>22 that bridge is and the river leading up to that bridge,</p> <p>23 that's not what you would call restricted waters for that</p> <p>24 particular vessel, would you agree with that?</p> <p>25 A. Maybe not restricted, but it's still a confined</p>

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<p style="text-align: right;">Page 49</p> <p>1 channel. And it's still a channel that if he had lost</p> <p>2 steering, had lost his motor -- his power, he could have</p> <p>3 wound up sideways and had a 1.9 knot ebb current, he</p> <p>4 could have just went sliding and he could have went. Was</p> <p>5 it going to go through the bridge sideways for 300 feet</p> <p>6 and he was 300 feet long?</p> <p>7 Q. You're speculating; right? That doesn't</p> <p>8 happen.</p> <p>9 A. No, it didn't happen, but it could be. So when</p> <p>10 you're steering, when you're going through a navigational</p> <p>11 channel and stuff like this, I always look at worse</p> <p>12 scenario. If everything works perfectly, sure you would</p> <p>13 go through it. But if something goes wrong, I want to</p> <p>14 have the ability to maneuver to be able to save myself,</p> <p>15 you know.</p> <p>16 Q. And if you were on a tug pushing an oil barge,</p> <p>17 you wouldn't have been in autopilot because it was</p> <p>18 against the law; correct?</p> <p>19 A. Correct.</p> <p>20 Q. But it's not against the law for other vessels;</p> <p>21 correct?</p> <p>22 A. It's the minimum. You know, I mean, they don't</p> <p>23 have to be --</p> <p>24 Q. It's not against --</p> <p>25 A. No, it's not against the law, no.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. In your opinion?</p> <p>2 A. Yeah, my opinion. I mean, they did the</p> <p>3 emergency drills and stuff like that, but there's a lot</p> <p>4 more things that can go wrong that I was trained ashore</p> <p>5 at conferences and stuff about all sorts of different</p> <p>6 operational equipment abilities, navigation priorities.</p> <p>7 And we were always -- I was as far as steering</p> <p>8 with automatic pilot in my career and working with an oil</p> <p>9 barge and stuff, we would never be on automatic pilot in</p> <p>10 a situation like this.</p> <p>11 Q. Agree. But you already testified that's</p> <p>12 because it's not lawful with an oil barge; correct?</p> <p>13 A. Right.</p> <p>14 MR. JETT: Objection.</p> <p>15 A. But if I was on any other piece of equipment,</p> <p>16 that's my habit. That's what my industry does. We</p> <p>17 always run hand steering going in any kind of river or</p> <p>18 channel, going up the Hudson River, going up the</p> <p>19 Mississippi, you know. Hand steering was -- it was like</p> <p>20 the safest way to do it.</p> <p>21 BY MR. RODGERS:</p> <p>22 Q. Well, it was also --</p> <p>23 A. To me you couldn't trust an automatic pilot</p> <p>24 when you had a lot of maneuverability to do.</p> <p>25 Q. Yes. But the work you did it was actually the</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. It's not against the law; correct?</p> <p>2 A. Correct.</p> <p>3 Q. To use autopilot for a vessel that is not</p> <p>4 carrying oil or hazardous material; correct?</p> <p>5 A. Correct. But in my opinion it's not safe.</p> <p>6 It's not a safe way -- not safe seamanship for operating</p> <p>7 a vessel on autopilot when you're in a river.</p> <p>8 Q. Fair enough. But you never actually navigated</p> <p>9 this vessel with a tug -- I'm sorry, this river with a</p> <p>10 tug and a barge; right?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Now you mentioned training in your report,</p> <p>13 correct, the crew training?</p> <p>14 A. Yes.</p> <p>15 Q. Now I believe you said there was no training,</p> <p>16 is that fair to say, or should I look it up in your</p> <p>17 report?</p> <p>18 A. There was no company training.</p> <p>19 Q. Okay. Would you agree there was -- well,</p> <p>20 strike. You agree there was on-the-job training by the</p> <p>21 captain and/or the mate with regards to the crew members;</p> <p>22 correct?</p> <p>23 A. Yes, minimal.</p> <p>24 Q. What does that mean?</p> <p>25 A. I mean, to me --</p>	<p style="text-align: right;">Page 52</p> <p>1 only legal way you could do it; correct?</p> <p>2 A. Correct.</p> <p>3 MR. JETT: Objection.</p> <p>4 BY MR. RODGERS:</p> <p>5 Q. Under the CFR? You could not use autopilot</p> <p>6 pushing or towing an oil barge; correct?</p> <p>7 MR. JETT: Objection.</p> <p>8 A. Correct.</p> <p>9 BY MR. RODGERS:</p> <p>10 Q. In inland waters; right?</p> <p>11 A. In inland, yes.</p> <p>12 Q. You could do it out at sea, right, out in the</p> <p>13 ocean?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So your opinion what is -- your opinion</p> <p>16 is even though this is not an oil barge and a tug pushing</p> <p>17 or pulling an oil barge, it's your opinion that Mate</p> <p>18 Morrissey should not have been using autopilot?</p> <p>19 MR. JETT: Objection.</p> <p>20 A. Yes.</p> <p>21 BY MR. RODGERS:</p> <p>22 Q. Okay. That's your opinion though; correct?</p> <p>23 A. My opinion and to me it was standard operating</p> <p>24 procedure in the industry.</p> <p>25 Q. Yes. But your opinion is not based on any</p>

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<p>Page 53</p> <p>1 experience going up and down a river pushing or towing a</p> <p>2 non oil barge; is that fair to say?</p> <p>3 MR. JETT: Objection.</p> <p>4 A. No. I pushed a barge up the Cook's Inlet to</p> <p>5 Anchorage and it was --</p> <p>6 BY MR. RODGERS:</p> <p>7 Q. To where?</p> <p>8 A. To Anchorage, Alaska. It was a rock salt barge</p> <p>9 called --</p> <p>10 Q. A what?</p> <p>11 A. A rock salt barge. I was delivering rock salt</p> <p>12 to Anchorage.</p> <p>13 Q. And what river was that?</p> <p>14 A. Cook's Inlet.</p> <p>15 Q. And where is that?</p> <p>16 A. Alaska.</p> <p>17 Q. Is that the only time you pushed a non oil</p> <p>18 barge in your what is it 25 years of being on tugs; is</p> <p>19 that about right?</p> <p>20 A. I moved some scows and stuff like that, but</p> <p>21 short distances. But yeah. I mean, to me inside a</p> <p>22 harbor and stuff I would never be on autopilot, it just</p> <p>23 was my practice. It was company policy too.</p> <p>24 Q. Well, you worked for an oil company; correct?</p> <p>25 A. Yes.</p>	<p>Page 55</p> <p>1 on a tug pushing or pulling an oil barge, is that</p> <p>2 required by law for two people to be on a bridge?</p> <p>3 A. Well, we -- depending on where we were, we</p> <p>4 always had two people up on the bridge in the confined</p> <p>5 areas underway in rivers and stuff like that. We always</p> <p>6 had him as a lookout.</p> <p>7 Q. And that was pushing or pulling oil barges;</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And that was when you were lawfully not</p> <p>11 permitted to use automatic pilot; correct?</p> <p>12 A. Correct. Also out at sea we would -- he</p> <p>13 wouldn't have to be in the wheelhouse as a lookout</p> <p>14 because we're in the ocean. But, I mean, I would have --</p> <p>15 he'd be on -- he'd be on standby. He'd be on my watch.</p> <p>16 He'd be --</p> <p>17 Q. Now is there a different lookout rule that you</p> <p>18 know of that applies to oil -- excuse me, strike that,</p> <p>19 reporter, sorry.</p> <p>20 With regards to tugs pushing or towing an oil</p> <p>21 barge, to your knowledge is there a separate regulation</p> <p>22 or law regarding lookouts?</p> <p>23 A. No. But the rule five lookout rule is just a</p> <p>24 minimum. I mean, we've always had a lookout, you know.</p> <p>25 It was irregardless whether it was an oil barge or a scow</p>
<p>Page 54</p> <p>1 Q. So that would be their policy; correct? If</p> <p>2 most, if not all, of their barges carried oil or</p> <p>3 hazardous materials, that would be their policy; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And it's fair to say that's the policy that you</p> <p>6 lived by because it was the law does not relate</p> <p>7 necessarily to the rest of the industry, would you agree</p> <p>8 with that?</p> <p>9 MR. JETT: Objection.</p> <p>10 A. Yeah. I guess. But to me the -- I just don't</p> <p>11 see why anybody, I don't care what you're pushing, what</p> <p>12 you're on would be on automatic pilot in a small confined</p> <p>13 area. And to me that channel was a confined area.</p> <p>14 I would want to have the ability to get out of</p> <p>15 the way as soon as I can, especially if you lose</p> <p>16 steering. You want your ability to maneuver and stuff</p> <p>17 like that and to me autopilot doesn't allow for that.</p> <p>18 BY MR. RODGERS:</p> <p>19 Q. When you -- okay. Fair enough. When you used</p> <p>20 it out at sea, did you -- when you put it on autopilot,</p> <p>21 did you ever leave the bridge unattended?</p> <p>22 A. No. No. We have -- that's why you have a</p> <p>23 second person on watch if you have to go to the bathroom,</p> <p>24 he comes up and watches it and you go down below.</p> <p>25 Q. Is the second person on either an oil tanker or</p>	<p>Page 56</p> <p>1 or whatever, I would always have a lookout at hand in the</p> <p>2 wheelhouse with me, if possible, underway in a river, in</p> <p>3 a river transit, daylight or nighttime.</p> <p>4 Q. With an oil barge; correct? Where you could</p> <p>5 not use automatic pilot; correct?</p> <p>6 MR. JETT: Object to the form.</p> <p>7 A. Right.</p> <p>8 BY MR. RODGERS:</p> <p>9 Q. Do you know of any -- strike that. Was there a</p> <p>10 policy at Exxon in inland waters that you have an</p> <p>11 additional lookout?</p> <p>12 A. It's not an additional lookout. He's a</p> <p>13 person -- he's my AB on watch.</p> <p>14 Q. But that was an Exxon requirement? Was that a</p> <p>15 policy?</p> <p>16 A. I don't know if was in writing, but it was my</p> <p>17 policy.</p> <p>18 Q. But do you know what the company generally did?</p> <p>19 Did you talk to other captains?</p> <p>20 A. I mean, I know what we all did. And I know</p> <p>21 most of the guys I knew that did it and my mates. We all</p> <p>22 had lookouts in inland waters going up and down rivers.</p> <p>23 Q. Where was the lookout?</p> <p>24 A. He was usually on the bridge with me. Or in</p> <p>25 certain areas like the Mississippi or whatever he would</p>

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<p style="text-align: right;">Page 57</p> <p>1 be up on the bow of the barge in case of an emergency</p> <p>2 he'd be able to drop the anchor.</p> <p>3 Q. And when you were -- was that something ordered</p> <p>4 by the captain or was that something that the mate on</p> <p>5 watch decided to do?</p> <p>6 A. I don't understand the question.</p> <p>7 Q. Well, you've been captain of a tug; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Did you usually have another officer called a</p> <p>10 mate who would stand bridge watch?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So if you were -- if you were the mate</p> <p>13 not the captain, if you were the mate standing bridge</p> <p>14 watch on a tugboat pushing or pulling an oil barge, was</p> <p>15 it your decision to use that AB as a lookout or was it</p> <p>16 the captain of the tug's decision?</p> <p>17 A. It would have been my decision as mate also.</p> <p>18 Q. I'm asking when you were mate, could you make</p> <p>19 that decision without going to ask the captain?</p> <p>20 A. Well, it was standing operating procedure for</p> <p>21 us.</p> <p>22 Q. It was standard operating procedure at Exxon to</p> <p>23 have the AB on watch with the officer; correct?</p> <p>24 A. In a river, yes, in close quarters situation.</p> <p>25 Q. Okay. And that was an Exxon rule; correct?</p>	<p style="text-align: right;">Page 59</p> <p>1 up I guess.</p> <p>2 MS. WERNER: So e-mailed the exhibits to the</p> <p>3 court reporter.</p> <p>4 MR. RODGERS: So let me look at the number.</p> <p>5 There's a number of previous exhibits I think.</p> <p>6 MR. JETT: Let's go off the record real quick</p> <p>7 and make sure we can pull up the exhibits.</p> <p>8 (A discussion was held off the record.)</p> <p>9 BY MR. RODGERS:</p> <p>10 Q. So a couple of preliminary questions. Captain,</p> <p>11 did you look at both of the 2692s?</p> <p>12 A. Yes.</p> <p>13 Q. Without putting it up, was it your</p> <p>14 understanding that the first 2692 filed by the company</p> <p>15 was based on Mr. Morrissey's earlier statements that</p> <p>16 turned out not to be true; is that fair to say?</p> <p>17 A. And signed by what's his name, Lenny.</p> <p>18 Q. Oh, Lenny. Lenny Baldassare?</p> <p>19 A. Right.</p> <p>20 Q. The port captain?</p> <p>21 A. Yes.</p> <p>22 Q. And are you familiar with the form 2692?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And is it your understanding it's generally</p> <p>25 against the law to file a false 2692?</p>
<p style="text-align: right;">Page 58</p> <p>1 MR. JETT: Objection.</p> <p>2 A. Exxon. I worked with Sunoco and I worked for</p> <p>3 Ameritrans, I did it with all three.</p> <p>4 BY MR. RODGERS:</p> <p>5 Q. Did they all deal with oil barges?</p> <p>6 A. Yes.</p> <p>7 MR. RODGERS: I think it's a good time to take</p> <p>8 a break. I don't know who is with you, Zach?</p> <p>9 MR. JETT: Yeah. Now is a good time, Jim,</p> <p>10 thank you.</p> <p>11 MR. RODGERS: Ten minutes, 15, whatever you</p> <p>12 want, Zach.</p> <p>13 MR. JETT: Let's do 15 minutes.</p> <p>14 (A break was taken.)</p> <p>15 BY MR. RODGERS:</p> <p>16 Q. So if we could -- I want to ask you about this</p> <p>17 Coast Guard 2692. Are you familiar with that form?</p> <p>18 A. Yes.</p> <p>19 Q. And did you look at any 2692s in relation to</p> <p>20 this case?</p> <p>21 A. Yes, the two of them.</p> <p>22 Q. Okay. And the first one was -- okay. Well,</p> <p>23 let's go to the second one.</p> <p>24 MR. RODGERS: Rachel, can you direct, no rush,</p> <p>25 can you direct the reporter or whoever to put that</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes.</p> <p>2 Q. Intentionally; right?</p> <p>3 A. Right.</p> <p>4 Q. And do you understand that the one that we have</p> <p>5 here that's dated I believe it's June 25, 2024, do you</p> <p>6 see that? The second page I guess.</p> <p>7 A. Yes, on the bottom, yes.</p> <p>8 Q. Okay. Would you agree that if the company</p> <p>9 finds out that for whatever reason the initial 2692 was</p> <p>10 incorrect and they file an amended 2692 or a new one,</p> <p>11 that they're not going to -- they're not going to file a</p> <p>12 false amended 2692, is that your understanding? Would</p> <p>13 you agree with that just common sense?</p> <p>14 MR. JETT: Objection.</p> <p>15 A. Yes.</p> <p>16 BY MR. RODGERS:</p> <p>17 Q. Okay.</p> <p>18 A. I would hope.</p> <p>19 Q. One would. So I just want to -- did you --</p> <p>20 sorry, reporter, I'm going to rephrase. Yvette, right?</p> <p>21 THE COURT REPORTER: Yes.</p> <p>22 MR. RODGERS: Yes, sorry. I mumble a little</p> <p>23 bit.</p> <p>24 BY MR. RODGERS:</p> <p>25 Q. Did you read this as part of your review, this</p>

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<p style="text-align: right;">Page 61</p> <p>1 June 25th amended 2692? If it's okay, I'll call it 2 amended. Is that okay? 3 A. Fine, yes. I've read it. 4 Q. Okay. Did you read that before you made your 5 final conclusions? 6 A. Yes. It was part of the original data I 7 received. 8 Q. Did you understand that it was based at least 9 in part on Mr. Morrissey's either statement or testimony 10 before the Coast Guard? 11 A. When I first read it, no. But now I do. 12 Q. So you would agree that this was -- strike 13 that. It's your understanding that this 2692 is based at 14 least in part on Mate Morrissey's statement or testimony 15 to the US Coast Guard; correct? 16 MR. JETT: Objection. 17 A. Yes. 18 BY MR. RODGERS: 19 Q. Okay. Can you just read the first, and it's 20 page two, the first typed paragraph called 25A? Do you 21 mind reading that into the record? 22 A. You want me to read it? 23 Q. Yeah. I just want you to read. You want me to 24 read it? I'll read it, but I would prefer you. 25 A. No, I'll read. No, I still remember how to</p>	<p style="text-align: right;">Page 63</p> <p>1 not what was typed, casualty events and the conditions 2 and actions that were believed to be causal factors as 3 well as any hazards created as a result of the casualty. 4 Attach additional sheets as necessary. Do you see that? 5 A. Yes. 6 Q. And then the typed written portion would be 7 what Carver typed in; correct? 8 A. Yes. 9 Q. And it appears that the signature line is Brian 10 Moore general manager; correct? 11 A. Yes. 12 Q. Okay. Could you read what 25B says? 13 A. Okay. The officer -- 14 Q. I appreciate it. 15 A. "The officer of the watch had failed to 16 properly switch to hand steering and also gave minimal 17 engine orders at first in order to prevent further 18 headway or course change. The officer of the watch 19 stated that once he did switch to hand steering, he gave 20 a slower stern at first and then fuller stern. Once 21 contact was made with the bridge structure, the vessel 22 was barely making headway and began to make a sternway. 23 The officer of the watch was backing into the main 24 channel and regained control of the vessel." 25 Q. Okay. Is that another paragraph or one of the</p>
<p style="text-align: right;">Page 62</p> <p>1 read. "The towing vessel Mackenzie Rose was pushing the 2 deck barge Weeks 281 ahead in push gear. They were 3 outbound the Norfolk Southern Branch for sea. The 4 officer on watch, James Morrissey, was in autopilot and 5 didn't switch over to non-follow-up hand steering but 6 thought he did. The vessel continued to track to port 7 and before the officer of the watch was able to correct 8 it after switching to non-follow-up, the bow of the barge 9 made contact with the western section of the bridge." 10 Q. Thank you. Now based on that statement it 11 appears that he did switch eventually before the barge 12 hit the bridge; correct? 13 A. Yes. 14 Q. Okay. But not in time to prevent it from 15 hitting the bridge; correct? 16 MR. JETT: Objection. 17 A. Correct. 18 BY MR. RODGERS: 19 Q. Okay. If you can read 26B which is under -- 20 the first thing you just read was called -- was 25A 21 activity or operation being conducted at the time of the 22 casualty. Do you see that on the form? 23 A. Yes. 24 Q. Okay. 25B is the description of the casualty 25 and then in parenthesis, and I'm reading the form itself</p>	<p style="text-align: right;">Page 64</p> <p>1 paragraphs you relied on in ultimately forming your 2 findings? 3 A. No. 4 Q. Okay. And why not? 5 A. Because it's not fact. 6 Q. Okay. So what are you saying is not correct in 7 this paragraph? 8 A. In reviewing the video, the tug doesn't back 9 down until he hits the bridge. He's doing like 5.2 10 knots. 11 Q. Okay. So you disagree with the portion that 12 this form says that he went to slower stern; correct? 13 A. Correct. And then fuller stern. He didn't go 14 to fuller stern until after he hit the bridge. 15 Q. Okay. And the first paragraph, you see that? 16 A. Yes. 17 Q. 25A. We'll get back to 25B. 25A, do you see 18 that? 19 A. Yes. 20 Q. Is that consistent, that paragraph, just that 21 one consistent with your finding? 22 A. No. 23 Q. What part is not -- that you don't agree with? 24 A. He continued -- the vessel continued to track 25 to port and before he was able to correct it, after</p>

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<p style="text-align: right;">Page 65</p> <p>1 switching to non-follow-up, the bow of the barge made</p> <p>2 contact with the western section of the bridge.</p> <p>3 Q. Okay. So what is in that sentence that you</p> <p>4 don't agree with?</p> <p>5 A. He should have been changing course about a</p> <p>6 quarter of a mile before. Once he saw he was outside the</p> <p>7 opening of the bridge, he continued straight ahead at</p> <p>8 five knots with no opening. If he was there looking at</p> <p>9 it, there's no way in hell he would have kept going at</p> <p>10 five knots.</p> <p>11 Q. Well, I'm not asking you what he should have</p> <p>12 done. I'm asking you is based on that paragraph and</p> <p>13 based on what you know from the Rose Point data, is that</p> <p>14 consistent with what you saw in the evidence, not what he</p> <p>15 should have done but what happened?</p> <p>16 MR. JETT: Objection.</p> <p>17 A. No.</p> <p>18 BY MR. RODGERS:</p> <p>19 Q. Okay. You agreed in your number four finding</p> <p>20 that he failed to switch over to the NFU; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. And that portion you agree with;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then the portion where he says he didn't</p>	<p style="text-align: right;">Page 67</p> <p>1 purpose of this drill. Okay?</p> <p>2 A. Okay.</p> <p>3 Q. You're now if you go back to 25B, the second</p> <p>4 paragraph, the OOW had failed to properly switch to hand</p> <p>5 steering. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. You agree with that; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that's in your paragraph four of your</p> <p>10 findings; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now did you see the video?</p> <p>13 A. Yes.</p> <p>14 Q. And is -- and the video shows the barge with</p> <p>15 the tug pushing it coming into contact with the bridge;</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And then it backs down and then you see the</p> <p>19 black smoke; correct?</p> <p>20 A. Yes, after it hits the bridge.</p> <p>21 Q. Okay. Are you going to see black smoke if</p> <p>22 you're just transiting anywhere and you -- in your</p> <p>23 opinion and you do a slower stern, is that going to show</p> <p>24 black smoke in your experience?</p> <p>25 A. From going ahead, yes. Going from a head to a</p>
<p style="text-align: right;">Page 66</p> <p>1 switch over to non-follow-up steering but thought he did,</p> <p>2 do you agree with that?</p> <p>3 A. It's written there. Not necessarily agree.</p> <p>4 Q. Does that make sense that he wouldn't be able</p> <p>5 to hand steer if it was still on automatic pilot?</p> <p>6 A. Right. But automatic pilot he could have</p> <p>7 turned to the right also if he had been steering all the</p> <p>8 way up the river.</p> <p>9 Q. All right. Would you agree that if he doesn't</p> <p>10 turn off autopilot, that he cannot --</p> <p>11 A. Change course.</p> <p>12 Q. He cannot change course by hand steering; is</p> <p>13 that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. So you agree that that's initially what</p> <p>16 happened, he thought he turned it off, he didn't and then</p> <p>17 he couldn't steer, and then he realized he can't steer</p> <p>18 and then he turns it off, and then before he can avoid</p> <p>19 the contact with the bridge, the barge hits the bridge?</p> <p>20 Do you agree with that?</p> <p>21 MR. JETT: Object to the form.</p> <p>22 A. Yes.</p> <p>23 BY MR. RODGERS:</p> <p>24 Q. Okay. I just want us to be on the same page</p> <p>25 with what we agree on and what we don't. So that's the</p>	<p style="text-align: right;">Page 68</p> <p>1 stern, usually, yes.</p> <p>2 Q. Usually. What does usually mean?</p> <p>3 A. I mean, most of the times. Anytime I go with</p> <p>4 stern and I've been moving ahead, I get black smoke.</p> <p>5 Q. I don't mean full stern, I mean slower stern.</p> <p>6 A. No. You'll get some smoke and then once you</p> <p>7 give it the juice, she'll go black, black.</p> <p>8 Q. She'll go black once you get fuller stern;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. But not necessarily if you just go slower</p> <p>12 stern; correct?</p> <p>13 MR. JETT: Objection.</p> <p>14 A. Correct.</p> <p>15 BY MR. RODGERS:</p> <p>16 Q. Okay. So when you looked at the video, which I</p> <p>17 hope we don't have to show and go through it, you see the</p> <p>18 vessel on the barge moving along and you don't see</p> <p>19 certainly any black smoke prior to hitting the bridge;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. But you can't as you sit here today say</p> <p>23 that he, during that time before he hit the bridge, he</p> <p>24 had not gone slower stern; correct?</p> <p>25 MR. JETT: Objection to the form.</p>

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<p style="text-align: right;">Page 69</p> <p>1 A. No. In my opinion -- in my opinion looking at 2 that video he never slowed down. 3 BY MR. RODGERS: 4 Q. Okay. But you would agree that that is just, 5 what, the last hundred yards, 200 yards before he hit the 6 bridge, comes into the view of the camera, would you 7 agree with that? 8 A. Yes. 9 Q. Okay. And can you -- how can you tell what the 10 speed is looking at that video? Do you want us to pull 11 it up? I don't know if we have it but. 12 A. The speed was the same as it was in the 13 beginning when we first started seeing it. And then when 14 he said he lost steering, at that point you're heading 15 for -- you're not even heading for the opening of the 16 bridge. How do you not slow down? 17 Q. I'm just asking you your not slowing down 18 opinion is just what you saw on the video; correct? 19 A. Correct. 20 Q. The moments before the video or even 30 seconds 21 before the video you can't tell us as you sit here today 22 what speed he was doing and whether or not he slowed 23 down; right? 24 MR. JETT: Objection. 25</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. In your opinion? 2 A. That's my opinion. 3 Q. But you agree that based on everything you saw, 4 including this 2692, that he failed to switch from 5 autopilot to hand steering; correct? 6 A. Okay. According -- yeah, according to the 7 document. 8 Q. That's also your finding in paragraph four? 9 A. Yes. 10 Q. Okay. We don't have a disagreement on that; 11 correct? 12 A. No. 13 Q. Okay. 14 A. But that has nothing to do with his speed. 15 Q. No, I know. I know. I'm just trying to find 16 what part of this that you agree with and what you don't. 17 Okay? 18 A. Okay. 19 Q. And was that series of decisions and events was 20 that by Mate Morrissey? 21 A. Well, he was the one in the wheelhouse. 22 Q. So he was the one -- the licensed captain in 23 the Coast Guard; correct? 24 A. Yes. 25 Q. And he was the one navigating the tug and the</p>
<p style="text-align: right;">Page 70</p> <p>1 BY MR. RODGERS: 2 Q. Because it's not on the video, would you agree 3 with that? 4 A. I can't do it from the video, but I can do it 5 from the Rose Point. 6 Q. Okay. 7 A. The Rose Point shows the speed that he's going. 8 And Rose Point stops, it doesn't really show like he's 9 hitting the bridge, but all of a sudden he's slowing down 10 quickly which coincides with him going fuller stern but 11 he'd already hit the bridge. 12 BY MR. RODGERS: 13 Q. So is it your opinion, and correct me if I'm 14 wrong, is it your opinion that he failed to properly 15 switch off the autopilot and then properly engaged -- 16 disengaged it, went to hand steering, but that was too 17 late to either maneuver the vessel away from the bridge 18 or to slow the vessel down; is that pretty much your 19 opinion? 20 MR. JETT: Object to the form. 21 BY MR. RODGERS: 22 Q. Or conclusion I should say. 23 A. Well, he definitely didn't have time -- he 24 definitely did not slow down before he hit the bridge. 25</p>	<p style="text-align: right;">Page 72</p> <p>1 barge; correct? 2 A. Correct. 3 Q. And he was making all the decisions at the time 4 on maneuvering the tug and barge; is that correct? 5 MR. JETT: Object to the form. 6 A. Apparently. He was in the wheelhouse. 7 BY MR. RODGERS: 8 Q. And is that what you would expect from a US 9 Coast Guard licensed captain? 10 MR. JETT: Objection. 11 A. A confident one, yes. 12 BY MR. RODGERS: 13 Q. To be able to do that; correct? 14 A. He should be able to. 15 MR. RODGERS: All right. I'm sorry, reporter, 16 I talked over the witness. Did you get all of that? 17 THE COURT REPORTER: I think so. 18 BY MR. RODGERS: 19 Q. And as far as you know based on what you've 20 seen on the day of the incident Mate Morrissey was a 21 licensed captain; correct? By the Coast Guard, he was 22 licensed? 23 A. Yes. 24 Q. And he had no -- as far as you know his license 25 had not been suspended; correct?</p>

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<p style="text-align: right;">Page 73</p> <p>1 A. Correct.</p> <p>2 Q. Okay. So the licensed captain is also a</p> <p>3 licensed mate; correct? He was acting as a mate;</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Fully licensed by the Coast Guard; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And would you agree that he made the mistake?</p> <p>9 MR. JETT: Object to the form. You can answer,</p> <p>10 if you know.</p> <p>11 A. Made the mistake of?</p> <p>12 BY MR. RODGERS:</p> <p>13 Q. You think there were mistakes made by Mate</p> <p>14 Morrissey?</p> <p>15 MR. JETT: Objection.</p> <p>16 A. Yes.</p> <p>17 BY MR. RODGERS:</p> <p>18 Q. Okay. They weren't made on the bridge by</p> <p>19 Captain Miller; correct?</p> <p>20 A. Correct.</p> <p>21 Q. All right.</p> <p>22 MR. RODGERS: So let's -- thank you. Sorry,</p> <p>23 reporter, if it got a little bit hairy, but we'll</p> <p>24 see what happens.</p> <p>25</p>	<p style="text-align: right;">Page 75</p> <p>1 A. No.</p> <p>2 Q. Okay. So this -- your conclusion that he</p> <p>3 negligently and recklessly deviated outside the</p> <p>4 navigational channel, the basis of your understanding of</p> <p>5 negligence and recklessness came from Merriam's Webster</p> <p>6 Dictionary; is that fair to say?</p> <p>7 A. Correct.</p> <p>8 Q. And no other legal source?</p> <p>9 A. No.</p> <p>10 Q. Okay. Give me a second. Okay. If you go to</p> <p>11 page -- you may have answered this, but let's look at</p> <p>12 your report. Page five the middle paragraph you say:</p> <p>13 "The video shows the tug moving ahead at over five knots</p> <p>14 when the barge hit the structure of the bridge, et</p> <p>15 cetera, et cetera."</p> <p>16 You can't tell by looking at the video that it</p> <p>17 was going five knots; is that fair to say?</p> <p>18 A. Looking at the video I know he's moving, but</p> <p>19 I'm going by the rock -- by the -- what you call it, the</p> <p>20 Rose Point, that had speeds on it.</p> <p>21 Q. I understand. But this statement says the</p> <p>22 video shows. Would you want to amend that? That's</p> <p>23 not -- your five knots is not based on video; correct?</p> <p>24 A. No.</p> <p>25 Q. You're basing it on something else?</p>
<p style="text-align: right;">Page 74</p> <p>1 BY MR. RODGERS:</p> <p>2 Q. Let's go back to your report. Thanks, Rachel.</p> <p>3 I don't know how we get rid of that thing if we even have</p> <p>4 to. All right. Let's go to your report. I'm a little</p> <p>5 curious on a number of things, but this one I just want</p> <p>6 to ask you about. On page -- I don't know what page it</p> <p>7 is, but let's go to three. Okay. Four. The top of</p> <p>8 four. You see where you say he negligently and</p> <p>9 recklessly deviated, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Were you asked to opine on that? I mean, let</p> <p>12 me rephrase it. You understand negligently and</p> <p>13 recklessly, those are legal terms of art; right?</p> <p>14 A. Yeah. I have the definitions down below.</p> <p>15 Q. Okay. But were you asked by your attorneys to</p> <p>16 opine on those legal terms of art to make a conclusion on</p> <p>17 negligence and recklessness?</p> <p>18 A. No, it's my conclusion.</p> <p>19 Q. Okay. Are you familiar with Black's Law</p> <p>20 Dictionary?</p> <p>21 A. No.</p> <p>22 Q. Are you a lawyer?</p> <p>23 A. No.</p> <p>24 Q. Are you familiar with the maritime case law</p> <p>25 that defines negligence?</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I'm basing it on the video and observation,</p> <p>2 that boat was moving fast. And then with the assistance</p> <p>3 of the Rose Point.</p> <p>4 Q. Okay.</p> <p>5 A. I didn't put that in.</p> <p>6 Q. Without the Rose Point you really couldn't</p> <p>7 definitively say it was five knots just looking at the</p> <p>8 video; is that correct?</p> <p>9 A. I don't know. To me, it looked like it was</p> <p>10 doing fast. Five knots is pretty quick and he was moving</p> <p>11 quick.</p> <p>12 Q. Okay. But just for the record you can't --</p> <p>13 nobody can definitively look at the video and say he was</p> <p>14 doing five knots; correct?</p> <p>15 A. Okay.</p> <p>16 Q. So you supplemented it by looking at the Rose</p> <p>17 Point, is that your answer?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. If you go to the analysis you -- in the</p> <p>20 middle of your first paragraph I'll quote: "It is my</p> <p>21 expert opinion that several navigational, procedural and</p> <p>22 managerial failures contributed to and caused the subject</p> <p>23 to hit and run allision." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And I think we went over it, but let's</p>

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<p style="text-align: right;">Page 77</p> <p>1 just for the record when you say navigational, could you</p> <p>2 just set forth which navigational failures that you</p> <p>3 concluded?</p> <p>4 A. Being on automatic pilot in a closed -- in a</p> <p>5 confined space, in a confined channel. Not putting --</p> <p>6 the company procedural manual is not following the manual</p> <p>7 of the Simrad autopilot which states to not be on</p> <p>8 autopilot when you're transiting in a close quarter -- a</p> <p>9 close quarter situation. That's navigational.</p> <p>10 Q. And his -- and Morrissey's failure to switch</p> <p>11 over; correct?</p> <p>12 A. That's the procedure, yeah.</p> <p>13 Q. Oh, that's procedural. All right. So I'm</p> <p>14 going to ask you --</p> <p>15 A. I mean, it's navigational, procedural, all</p> <p>16 three pretty much coincide.</p> <p>17 Q. I know, but I'm not asking you about</p> <p>18 managerial. I'm asking about navigational. Are you</p> <p>19 saying Mate Morrissey's failure to switch from autopilot</p> <p>20 to NFU was navigational or procedural?</p> <p>21 A. Navigational.</p> <p>22 Q. Okay. So did you set forth what you consider</p> <p>23 the procedural failures that contributed to this alleged</p> <p>24 allision?</p> <p>25 A. That he was on automatic pilot to begin with.</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. Is there any evidence that there was heavy</p> <p>2 traffic on the river at the time of the incident?</p> <p>3 A. No.</p> <p>4 Q. Okay. "In poor visibility or extreme sea</p> <p>5 conditions." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Was there poor visibility that day?</p> <p>8 A. No.</p> <p>9 Q. Any evidence of extreme sea conditions?</p> <p>10 A. No.</p> <p>11 Q. Okay. The third one is when an area where use</p> <p>12 of an automatic pilot is prohibited by law. Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. And you already conceded, have you not, that in</p> <p>16 inland waters when it's not an oil barge there's no CFR</p> <p>17 prohibition; correct? Using autopilot; correct?</p> <p>18 MR. JETT: Object to the form.</p> <p>19 BY MR. RODGERS:</p> <p>20 Q. That's what you testified earlier; correct?</p> <p>21 A. Yes.</p> <p>22 Q. I'm waiting for your answer.</p> <p>23 A. I didn't hear a question.</p> <p>24 Q. Oh, okay. Sorry.</p> <p>25 MR. RODGERS: Yvette, could you read it to</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Okay. And you've already testified that you</p> <p>2 believe he shouldn't have been; correct?</p> <p>3 A. Yes.</p> <p>4 Q. So we're not going to beat a dead horse; right?</p> <p>5 A. No. But the manual also states that he</p> <p>6 shouldn't have been on automatic pilot.</p> <p>7 Q. Yes. Thank you. So is it your testimony that</p> <p>8 the Simrad manual is what governs this not the CFR?</p> <p>9 A. Well, I would say it's a part of it, it's part</p> <p>10 of the procedure. Especially when you have a vessel</p> <p>11 who's had a lot of problems with the automatic pilot.</p> <p>12 Q. Okay. Strike that as non-responsive. What is</p> <p>13 the part of the Simrad or Simrad manual that you're</p> <p>14 saying prohibits the use of autopilot in this situation?</p> <p>15 A. Yeah, on the next page it's written.</p> <p>16 Q. Thank you. In heavy traffic areas; right? I'm</p> <p>17 reading from it. "Do not use automatic steering when in</p> <p>18 heavy traffic areas." Right?</p> <p>19 A. Yeah.</p> <p>20 Q. You see that?</p> <p>21 A. In confined and land waterways.</p> <p>22 Q. Can I finish, please?</p> <p>23 A. Okay.</p> <p>24 Q. I got to ask you the question.</p> <p>25 A. Go ahead.</p>	<p style="text-align: right;">Page 80</p> <p>1 Captain Lewis?</p> <p>2 THE COURT REPORTER: His answer was yes. But</p> <p>3 do you me to read the question back?</p> <p>4 MR. RODGERS: I don't know if he gave an</p> <p>5 answer, did he?</p> <p>6 MR. CHAPMAN: He answered yes and was waiting</p> <p>7 for the next question.</p> <p>8 MR. RODGERS: Oh. Well, I want my question and</p> <p>9 I don't think he answered.</p> <p>10 THE COURT REPORTER: I have an answer as yes.</p> <p>11 (The question was read back.)</p> <p>12 BY MR. RODGERS:</p> <p>13 Q. Is that your answer? She didn't get it wrong</p> <p>14 or I didn't?</p> <p>15 A. No, that's what I answered.</p> <p>16 Q. Okay. So this three areas where the Simrad</p> <p>17 autopilot manual says not to use it and we just went over</p> <p>18 those three and none of those apply to this situation;</p> <p>19 correct?</p> <p>20 MR. JETT: Object to the form.</p> <p>21 A. Correct.</p> <p>22 BY MR. RODGERS:</p> <p>23 Q. So you're moving on to the next page. All</p> <p>24 right. By the way, did you read Captain Stephenson's</p> <p>25 report where he -- did you read his report?</p>

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<p style="text-align: right;">Page 81</p> <p>1 A. Yes.</p> <p>2 Q. And did you see where he made a survey by</p> <p>3 checking with various companies and whether they use</p> <p>4 autopilot in this situation, do you recall that?</p> <p>5 A. Yes.</p> <p>6 Q. And do you agree with what all those companies</p> <p>7 said or do you disagree?</p> <p>8 A. Disagree.</p> <p>9 Q. Okay. So I'm going to read -- I'm not going to</p> <p>10 read from, but I'm looking at the captain's report and he</p> <p>11 said he surveyed pilots from certain pilot associations.</p> <p>12 Okay?</p> <p>13 A. Yes.</p> <p>14 Q. And he said after listing them they as well</p> <p>15 navigated rivers and waterways using autopilot when</p> <p>16 conditions are appropriate. Do you see that?</p> <p>17 A. I don't have the report in front of me.</p> <p>18 Q. Oh, sorry. But you recall reading that, I'm</p> <p>19 sorry?</p> <p>20 A. I recall not agreeing with him. I don't recall</p> <p>21 everything he said.</p> <p>22 Q. So I'm going to say -- I'm just going to go</p> <p>23 through each one. So he surveyed pilots from Sandy Hook</p> <p>24 Pilot Association New York, do you recall seeing that?</p> <p>25 A. Yeah. I remember him listing a bunch of them.</p>	<p style="text-align: right;">Page 83</p> <p>1 Jacksonville, you disagree with them?</p> <p>2 A. Yes.</p> <p>3 Q. And I'm reading from his report just for the</p> <p>4 record.</p> <p>5 A. I believe you.</p> <p>6 Q. Yeah. Well, you better be or I'm in trouble.</p> <p>7 Crescent River Pilot Associations out of the Mississippi</p> <p>8 River, you disagree with them?</p> <p>9 A. Wholeheartedly.</p> <p>10 Q. Why wholeheartedly?</p> <p>11 A. Because I've been up that river many times with</p> <p>12 pilots aboard and we never used autopilot.</p> <p>13 Q. Okay. Was that with oil barges?</p> <p>14 A. Oh, yeah.</p> <p>15 Q. Okay. But this was not an oil barge; right?</p> <p>16 You agree with me on that?</p> <p>17 A. Right.</p> <p>18 Q. Okay. And then just two more. Galveston Texas</p> <p>19 City Pilots Galveston, you disagree with them as well?</p> <p>20 A. Yes.</p> <p>21 Q. And the last one he surveyed was Port</p> <p>22 Everglades Pilot Association out of Fort Lauderdale, you</p> <p>23 disagree with them as well?</p> <p>24 A. Yes. I've been in there many times and we</p> <p>25 never went in on autopilot.</p>
<p style="text-align: right;">Page 82</p> <p>1 I didn't memorize them.</p> <p>2 Q. I'm reading it. I mean, if you don't believe</p> <p>3 me, I'll get the report up on the screen.</p> <p>4 A. No. I don't need -- I don't need the report.</p> <p>5 Q. So you disagree with the pilots that Captain</p> <p>6 Stephenson talked to from Sandy Hook Pilot Association of</p> <p>7 New York; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. He also listed American Harbor & Docking</p> <p>10 Pilots Association Philadelphia as also saying that they</p> <p>11 can navigate rivers and waterways using autopilot when</p> <p>12 conditions are appropriate.</p> <p>13 So you are testifying that you disagree with</p> <p>14 the American Harbors & Docking Pilots Association out of</p> <p>15 Philadelphia; is that correct?</p> <p>16 MR. JETT: Object to the form.</p> <p>17 A. Yes.</p> <p>18 BY MR. RODGERS:</p> <p>19 Q. You disagree with them. And the next one -- by</p> <p>20 the way, it's the same question, it's just a different</p> <p>21 association.</p> <p>22 A. Yeah. I disagree with all of them, how is</p> <p>23 that?</p> <p>24 Q. You disagree -- well, I want to get them on</p> <p>25 record. St. John's Bar Pilot Association out of</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. But that was with oil barges; correct?</p> <p>2 A. Right.</p> <p>3 Q. Okay. So that had to do with autopilot. I may</p> <p>4 ask you about his surveys with other companies, but the</p> <p>5 issue of autopilot that's who he surveyed. Just want to</p> <p>6 put that in the record, Captain, so I'm not confusing</p> <p>7 anybody. Most importantly I'm not confusing you because</p> <p>8 you're the witness.</p> <p>9 So you then -- okay. Let's go to page seven.</p> <p>10 You cited US Inland Rules of the road, Rule 5. Do you</p> <p>11 see that, the lookout?</p> <p>12 A. Yes.</p> <p>13 Q. And you cited every -- I'm going to quote what</p> <p>14 you quoted, which I'm assuming you're correct from</p> <p>15 33CFR-83.05. This is what you quoted: "Every vessel</p> <p>16 shall at all times maintain a proper lookout by sight and</p> <p>17 hearing as well as by all available means appropriate in</p> <p>18 the prevailing circumstances and conditions so as to make</p> <p>19 a full appraisal of the situation and of the risk of</p> <p>20 collision." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Is that the only regulation or policy you</p> <p>23 looked at regarding this case as far as lookout is</p> <p>24 concerned?</p> <p>25 A. Yeah, Rule 5 is the lookout rule.</p>

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<p style="text-align: right;">Page 85</p> <p>1 Q. Did you look at the SMS of -- that was provided 2 of Carver? 3 A. Yes. It's pretty much word for word what this 4 says. 5 Q. Okay. We're going to pull up a section of the 6 SMS and I'm just -- and I'll read it or you can read it. 7 We'll read it together and then I'll ask you a few 8 questions on it. 9 MR. RODGERS: Rachel, let me see what the 10 original section was. Are you looking or do you 11 need me to? 12 MS. WERNER: We're pulling up the lookout 13 document. This would be the SMS exhibit from Brian 14 Moore. One second. Let me pull that up. 15 MR. RODGERS: Just while you're doing that, 16 Reporter, did Rachel give you the exhibit number? 17 THE COURT REPORTER: No. 18 MR. RODGERS: We'll do that in a minute. 19 BY MR. RODGERS: 20 Q. Do you see the 7.16 called lookout on the 21 screen? 22 A. Yes. 23 Q. Okay. And that -- I don't know what the 24 exhibit number it's from, but there's -- we can start 25 with the Carver Bates stamp number wherever that is.</p>	<p style="text-align: right;">Page 87</p> <p>1 A. Yes. 2 Q. Do you want to read it into the record, or I 3 can, it's up to you? 4 A. You can read it. You can see it better than I 5 can. 6 Q. All right. So I'm just going to read and then 7 ask you a few questions. "On vessels where there is an 8 unobstructed all around view provided at the steering 9 station as on certain pleasure craft, fishing boats, and 10 towing vessels or where there's no impairment of night 11 vision or other impediment to keeping a proper lookout, 12 the watch officer and helmsman may safely serve as the 13 lookout." Do you see that? 14 A. Yes. 15 Q. Are you familiar with that section -- 16 A. Yes. 17 Q. -- before you -- before you saw this? 18 A. Yes. 19 Q. You've seen a one-man bridge operation section 20 before you saw this document? 21 A. Yes. 22 Q. Where have you seen that? 23 A. In another case I'm working on Forced Maritime 24 Safety Management System. 25 Q. Okay. You would agree that this was a towing</p>
<p style="text-align: right;">Page 86</p> <p>1 Okay. 000155 is the Carver Bates stamp number and 2 it's -- we'll get to the exhibit number letter whenever a 3 little later. 4 Did you look at this section? Well, no, strike 5 that. I'm sorry. Was this made available to you 7.16 6 lookout? 7 A. Yes. And I read it. 8 Q. And where do you understand this document comes 9 from that we're looking at? The document, not the 10 wording in it, but the document itself. 11 A. It comes from the Safety Management System. 12 Q. Okay. So your understanding is as far as a 13 lookout that there was in the Safety Management System of 14 Carver a lookout provision; correct? 15 A. Yes. 16 Q. Okay. Did you look at -- now we're not looking 17 at it, we're looking at you. 18 MS. WERNER: My computer is glitching one 19 second. 20 MR. RODGERS: That's all right. Take your 21 time. No pressure. Yet. 22 MS. WERNER: My apologies, we're back. 23 BY MR. RODGERS: 24 Q. It's back, yeah. Do you see the one-man bridge 25 operations?</p>	<p style="text-align: right;">Page 88</p> <p>1 vessel; correct? 2 A. Yes. 3 Q. And he was at at least one of the steering 4 stations, correct, the upper wheelhouse? 5 MR. JETT: Object to the form. 6 A. Yes. 7 BY MR. RODGERS: 8 Q. Okay. And would you agree that it was a clear 9 day? 10 A. Yes. 11 Q. Do you have an opinion as to -- well, strike 12 that. Do you agree that he an unobstructed all around 13 view at the steering station? 14 MR. JETT: Object to the form. 15 A. Yes. 16 BY MR. RODGERS: 17 Q. And there was the night vision is inapplicable 18 because it was broad daylight; correct? 19 A. Correct. 20 Q. In your opinion was there any impediment to 21 keeping a proper lookout on that day? 22 A. No. 23 Q. So would you agree that on that day in that 24 situation the watch officer, who is Mr. Morrissey, mate, 25 he can safely serve as the lookout according to this</p>

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<p style="text-align: right;">Page 89</p> <p>1 one-man bridge operation policy; correct?</p> <p>2 A. According to the SMS, yes.</p> <p>3 Q. Okay. You want me to read -- and do you have</p> <p>4 any disagreement with that policy?</p> <p>5 A. Yeah. It's just a basic. There's nothing says</p> <p>6 you can't have a lookout. There's no reason -- my</p> <p>7 philosophy, my standard in my training and in my</p> <p>8 operating of a vessel in a narrow channel I've always had</p> <p>9 a lookout.</p> <p>10 Q. And I don't disbelieve you, but also you would</p> <p>11 agree that your entire career on tugs was pushing or</p> <p>12 towing oil barges; correct?</p> <p>13 A. That has nothing to do with a lookout. I also</p> <p>14 operated a tugboat without a barge, went out without a</p> <p>15 barge, I just operated the tugboat. We didn't use</p> <p>16 autopilot and we didn't have a lookout on a light</p> <p>17 tugboat. But this is pushing a barge in a river.</p> <p>18 Q. Okay. But the question --</p> <p>19 A. I don't care what the barge is, it should have</p> <p>20 a lookout.</p> <p>21 Q. All right. All right. Listen, that's your</p> <p>22 answer.</p> <p>23 A. Yep.</p> <p>24 Q. But you didn't answer the question. Although I</p> <p>25 want to keep your answer. But I can't even remember my</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. And according to the one-man bridge operations</p> <p>2 it's acceptable under the conditions in this section for</p> <p>3 the watch officer to act as his own lookout; correct?</p> <p>4 A. Correct.</p> <p>5 Q. That's what it says?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Now I'm going to read the whole thing</p> <p>8 because I don't want to be unfair and I want to give you</p> <p>9 a chance. Whoa, no, no. Okay. Thanks, Rach.</p> <p>10 "However, it's expected this practice will only</p> <p>11 be followed after the situation has been carefully</p> <p>12 assessed on each occasion and has been clearly</p> <p>13 established that it is proven to do so. Full accounts</p> <p>14 shall be taken of the weather, conditions of visibility,</p> <p>15 traffic density, and proximity of navigational hazards."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. "It is not the intent of these rules to require</p> <p>19 additional personnel forward if none is required to</p> <p>20 enhance safety." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Now is it -- would you agree that a fully</p> <p>23 licensed mate, who's also a fully licensed captain by the</p> <p>24 Coast Guard, within his responsibility and duty is</p> <p>25 qualified to assess the situation?</p>
<p style="text-align: right;">Page 90</p> <p>1 question. Okay.</p> <p>2 You would agree that your experience, at least</p> <p>3 99 percent of it, was pushing or towing oil barges;</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. You would agree that oil barges even before</p> <p>7 OPA90 are specific situations; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Not a great question. But just in the</p> <p>10 vernacular towing or pushing oil barges anywhere, but</p> <p>11 especially in inland waters, is a different animal than</p> <p>12 other barges and tugs; is that a fair statement?</p> <p>13 MR. JETT: Objection.</p> <p>14 A. Yes.</p> <p>15 BY MR. RODGERS:</p> <p>16 Q. As well as if you had other hazardous materials</p> <p>17 in inland water as well; right?</p> <p>18 A. Yes.</p> <p>19 Q. And that's because of the danger of oil spills;</p> <p>20 correct?</p> <p>21 A. Explosions, yes.</p> <p>22 Q. Okay. So you would agree that your use of</p> <p>23 lookouts predominately had to do with your experience</p> <p>24 pushing or towing oil barges; is that a fair statement?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. He should be.</p> <p>2 Q. Should be; right? Every single second a</p> <p>3 captain -- strike that. Every single section a qualified</p> <p>4 mate is up on the bridge, he or she is actually assessing</p> <p>5 a situation; correct?</p> <p>6 MR. JETT: Objection.</p> <p>7 A. Hopefully, yes.</p> <p>8 BY MR. RODGERS:</p> <p>9 Q. Hopefully, yes. And that's what you were</p> <p>10 trained at -- that type of responsibility and</p> <p>11 accountability you were trained at Port Schuyler on that;</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And you understood that completely when you sat</p> <p>15 for your exam to be a mate; right?</p> <p>16 A. Yes.</p> <p>17 Q. And you understood that completely in all your</p> <p>18 years pushing and towing oil barges around the country;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you would agree as you sit here today that</p> <p>22 Mate Morrissey was fully qualified on that day to assess</p> <p>23 whether or not he needed to have an extra lookout or not,</p> <p>24 would you agree to that statement?</p> <p>25 MR. JETT: Object to the form.</p>

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1 A. No. No, I don't because I don't think he was
2 up to the task, put it that way.
3 BY MR. RODGERS:
4 Q. Okay. Okay. That's a different issue.
5 A. But, I mean, if he had -- go ahead.
6 Q. Well, let's -- you're an expert. Assuming that
7 his license was valid, assuming that and there was no
8 reason for it not to be suspended, then he was fully
9 qualified to make that assessment assuming what I just
10 said, would you agree with that?
11 A. According to the Coast Guard, yes.
12 Q. Okay. Let's move on I guess. Thank you,
13 Rachel. Well, keep that section up. Never mind, I'm
14 sorry. As long as it's handy.
15 So would you agree, Captain, that based on that
16 SMS section on lookout that Mate Morrissey was following
17 Carver's policy?
18 A. Yes.
19 Q. That's in one -- sorry. Yes?
20 A. Yes.
21 Q. Okay. And that's clearly laid out in that
22 section 7.16; correct?
23 A. Correct.
24 Q. As to lookout; correct?
25 A. Correct.

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1 Q. Okay. You also -- oh, okay. No, no, we'll get
2 to that later. Sorry. On training -- let's go to
3 training. Is it your testimony that there was no
4 training whatsoever or that -- including no on-the-job
5 training or there was no formal training in some other
6 venue? What is your actual opinion as to training for
7 that particular crew?
8 A. I didn't see any information showing that the
9 crew, which most of them were very new to the company,
10 had any kind of company training. The only training
11 mentioned is being trained during emergency exercises and
12 stuff of how to do things or whatever and to me that's an
13 inefficient use.
14 The company should be training people before
15 they come on the boat and not just by handing them a
16 manual or handing them something to read. There should
17 be some hands on training. And Carver in my -- I didn't
18 see any of that and they didn't even have a safety
19 officer. We always had a safety officer that controlled
20 the training. We kept records of every single thing they
21 did and when they were due to have it renewed, et cetera.
22 So training was a lot -- a lot different in my company.
23 Q. Go ahead, sorry. Did you get that, Reporter,
24 sorry I interrupted?
25 A. I'm good.

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1 MR. JETT: Did you finish?
2 THE WITNESS: Yeah.
3 THE COURT REPORTER: Yes.
4 BY MR. RODGERS:
5 Q. You would agree with this, Captain, that Exxon
6 Shipping and Exxon Oil Company is a completely different
7 company than Carver Towing? You would agree to that;
8 right?
9 A. Of course, yes.
10 Q. Are they not one of the biggest oil companies
11 in the world?
12 A. Yes.
13 Q. And was the Exxon Shipping one of the
14 biggest -- well, they were a big company shipping their
15 own oil; right?
16 A. Not really. They weren't that big.
17 Q. They weren't that big. How big were they at
18 the time you worked for them?
19 A. Maybe they had seven ships and six tugboats,
20 seven tugboats and maybe ten barges.
21 Q. And after OP90 isn't it true that Bouchard
22 Transportation did a lot of inland movement of Exxon oil?
23 A. I don't know.
24 Q. You don't know?
25 A. Nope.

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1 Q. You ever heard of Bouchard?
2 A. Yeah, of course I heard of Bouchard.
3 Q. And didn't Exxon after OPA90, didn't they start
4 unloading their tankers on to third party barges to avoid
5 the liability of OPA90, if you know? If you don't, you
6 don't.
7 A. No, I don't. I wasn't in New York Harbor at
8 that time.
9 Q. Not New York Harbor, the whole country.
10 A. Yeah, but I don't remember Bouchard being
11 around the whole country.
12 Q. Do you remember any other third party companies
13 moving Exxon oil as opposed to you as in your tugs and
14 barges that were part of Exxon?
15 MR. JETT: Object to the form.
16 A. I might.
17 BY MR. RODGERS:
18 Q. If you understand it.
19 A. I think Eklof might have moved oil and barges
20 in New York Harbor from Conhope to Bayway, places like
21 that. I recall Bouchard being coming to the docks and
22 loading at Bayway, but I don't know where they were going
23 or what they were loading and what for. I don't know
24 anything about the chartering or hiring about cargo.
25 Q. All right. All right. Point made. But you

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<p style="text-align: right;">Page 97</p> <p>1 would agree Exxon Shipping and Exxon Oil are different in 2 size and scope than Carver; correct? 3 A. Yes. 4 Q. Did you look at -- because you opined on the 5 company, did you look at all the materials regarding the 6 company -- 7 A. Which company? 8 Q. -- that were provided to you? Carver, Carver. 9 A. No. 10 Q. Do you know what the size of the company they 11 are? 12 A. No. 13 Q. Do you know what they do? 14 A. I know they have a lot of tugs and barges. 15 They move a lot of rock and stuff, concrete out of 16 Coeymans. As far as the amount they have or what they do 17 I didn't look into that. I didn't see a need to. 18 Q. Well, you were opining on the managerial issues 19 at Carver. Don't you think you should have looked at the 20 size of the company and the organizational structure? 21 A. I was looking at how they managed the tug, 22 Mackenzie Rose. 23 Q. And so -- and you read Nick Laraway's 24 deposition you said? 25 A. Yeah. I listened to it too.</p>	<p style="text-align: right;">Page 99</p> <p>1 A. No. 2 Q. Are you saying Nick Laraway should have been on 3 the tug at the time of the incident -- 4 A. No. 5 Q. -- the president of the company? 6 A. No. I would have thought he might know more 7 than what he knew in the deposition about what was going 8 on especially -- 9 Q. Did your lawyer tell you that? 10 A. Especially after someone hit the bridge. 11 Q. Did your lawyer tell you that? 12 MR. JETT: Objection. 13 A. Tell me what? 14 MR. JETT: Don't answer that. 15 BY MR. RODGERS: 16 Q. That he doesn't know anything? 17 A. It's my opinion from watching him. 18 Q. Okay. Him not knowing anything in your opinion 19 did that have anything to do with -- strike that. 20 Explain what you mean by managerial failings 21 specifically, give me specifics because it's your report. 22 A. Okay. Carver knew there was a problem on the 23 tug with the automatic pilot. They had two incidents in 24 May, prior to that in April, March and April there were 25 two repairs done to the new autopilot that went on the</p>
<p style="text-align: right;">Page 98</p> <p>1 Q. And after listening -- well, strike that. Did 2 you read Brian Moore's deposition? 3 A. Yes. 4 Q. When you say managerial, are you talking about 5 what the port captain did with the crews and the 6 captains? 7 A. Yeah, Laraway too. Laraway didn't seem to know 8 anything. Every question he was asked about the 9 operation of the vessel he referred to talking to Moore 10 or the port engineer, Lenny, port captain. What was 11 his -- I can't remember his name. 12 Q. Baldassare, Lenoard Baldassare. 13 A. Yes. 14 Q. So wouldn't you expect Lenoard Baldassare to 15 know what a port captain knows? 16 A. I would think. 17 Q. And wouldn't you expect Brian Moore's general 18 manager to know what the general manager knows? 19 A. He didn't know much either. He kept referring 20 to Lenny. 21 Q. Yeah. Strike that as non-responsive. 22 MR. JETT: Objection. 23 BY MR. RODGERS: 24 Q. Are you saying Nick Laraway should have been 25 down on Staton Island acting as a port captain?</p>	<p style="text-align: right;">Page 100</p> <p>1 vessel in November '23. In May they had two more 2 incidents. This is June. They made no distinction, no 3 specification to the company to do anything different 4 about the autopilot. In my opinion they should have been 5 given an order not to be on autopilot on that vessel 6 going in a narrow channel. 7 Q. Okay. But you agree in your section four that 8 in fact it wasn't the autopilot that failed, it was James 9 Morrissey that failed; correct? 10 A. But still the autopilot should never have been 11 on in my opinion. 12 Q. You agree that it was not the autopilot it was 13 James Morrissey -- 14 MR. JETT: Objection. 15 BY MR. RODGERS: 16 Q. -- that caused the incident; correct? 17 MR. JETT: Objection. 18 A. No, I can't answer that. James Morrissey was 19 on autopilot. Okay. So the autopilot took him in a 20 location where he shouldn't have been. When he tried to 21 switch over, he didn't switch over correctly. Then he 22 finally did switch over. Okay, fine, you switch over 23 now. How do you still hit the bridge when the opening is 24 45 degrees to your right? 25</p>

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<p style="text-align: right;">Page 101</p> <p>1 BY MR. RODGERS:</p> <p>2 Q. Well, let's do this because you're an expert.</p> <p>3 Assuming, okay, assuming that the autopilot is permitted</p> <p>4 to be used in the Elizabeth River on that day, okay,</p> <p>5 assuming. You with me?</p> <p>6 A. Yes.</p> <p>7 Q. That there's -- that it's both appropriate</p> <p>8 procedure and it's not unlawful to use the autopilot at</p> <p>9 the time he was using it. I'm asking you to assume that;</p> <p>10 correct?</p> <p>11 A. Okay.</p> <p>12 Q. Assuming that, that the autopilot was</p> <p>13 permitted -- you're looking over at your lawyer, is there</p> <p>14 something he's doing?</p> <p>15 A. No.</p> <p>16 Q. Assuming that and there's the tug and the barge</p> <p>17 moving along, then the only mistake, assuming that was</p> <p>18 Mr. Morrissey, Mate Morrissey failing to properly</p> <p>19 disengage the autopilot and switch to manual steering;</p> <p>20 correct?</p> <p>21 MR. JETT: Object to the form.</p> <p>22 A. Correct.</p> <p>23 BY MR. RODGERS:</p> <p>24 Q. So assuming the facts I gave you, that was the</p> <p>25 cause of the incident; am I correct?</p>	<p style="text-align: right;">Page 103</p> <p>1 A. Right.</p> <p>2 Q. So we disagree on that. You agree we're just</p> <p>3 disagreeing on that part?</p> <p>4 A. I disagree with you, yes.</p> <p>5 Q. All right. I just want to get what your</p> <p>6 opinion is going to be at trial. I don't want you</p> <p>7 surprising me and ambushing me. All right. So let's go</p> <p>8 to the -- I'm sorry I'm bouncing around, but I think it</p> <p>9 goes quicker when I bounce.</p> <p>10 MR. JETT: That's fine. Jim, when you get a</p> <p>11 chance at the next good stopping point, can we take</p> <p>12 a break?</p> <p>13 MR. RODGERS: Who is that?</p> <p>14 MR. JETT: Zach.</p> <p>15 MR. RODGERS: Oh, you sound like Mark. You've</p> <p>16 been working too long.</p> <p>17 MR. JETT: No, I'm sitting here. Whenever you</p> <p>18 get to a good stopping place.</p> <p>19 MR. RODGERS: Oh, this is good time. You can</p> <p>20 do that, Captain, just tell me how long.</p> <p>21 MR. JETT: Ten minutes.</p> <p>22 MR. RODGERS: Okay. Good. We'll see you in</p> <p>23 ten. Thank you.</p> <p>24 (A break was taken.)</p> <p>25</p>
<p style="text-align: right;">Page 102</p> <p>1 MR. JETT: Object.</p> <p>2 BY MR. RODGERS:</p> <p>3 Q. Assuming the facts I gave you.</p> <p>4 MR. JETT: Objection.</p> <p>5 A. No, that's not the only cause of the incident.</p> <p>6 BY MR. RODGERS:</p> <p>7 Q. Okay. Assuming the facts that I gave you the</p> <p>8 autopilot -- did the cause of the incident was not the</p> <p>9 autopilot mechanically or electronically failing, it was</p> <p>10 Mr. Morrissey failing to properly disengage the</p> <p>11 autopilot; correct?</p> <p>12 MR. JETT: Objection.</p> <p>13 A. According to the second 2692, yes.</p> <p>14 BY MR. RODGERS:</p> <p>15 Q. Okay. Now I know we disagree and you just</p> <p>16 stated it quite clearly that -- and let me get this</p> <p>17 right. You believe that the autopilot should not have</p> <p>18 been in use at the time; correct?</p> <p>19 A. Correct.</p> <p>20 Q. So it's kind of like if this didn't happen,</p> <p>21 then this wouldn't have happened; right?</p> <p>22 A. Right.</p> <p>23 Q. And then the big issue is the first part,</p> <p>24 whether or not it could have, should have, would have</p> <p>25 been in use; right?</p>	<p style="text-align: right;">Page 104</p> <p>1 BY MR. RODGERS:</p> <p>2 Q. Okay. Captain, when you were a captain of the</p> <p>3 various tugs you were on, did you do training on the</p> <p>4 tugs?</p> <p>5 A. Yes.</p> <p>6 Q. What type of training just generally if you can</p> <p>7 remember?</p> <p>8 A. Same thing emergency procedures. We would do</p> <p>9 bridge resource management with the mates. I did a lot</p> <p>10 of training of the mates on the vessel in steering and</p> <p>11 when we were in harbor mode teaching them how to come</p> <p>12 alongside a ship, et cetera and stuff like that. Boat</p> <p>13 handling was a big one. And then when we had the barges,</p> <p>14 it would be cargo handling.</p> <p>15 Q. It would be what?</p> <p>16 A. Cargo handling, loading and discharging barges</p> <p>17 and showing the people how to strip a tank, how to top</p> <p>18 off a tank. I mean, that's the hands on, you got to be</p> <p>19 there to do that.</p> <p>20 Q. So you were either a mate or a captain would</p> <p>21 you -- and if you assigned lookouts, did you train them</p> <p>22 at all like the younger guys who were new?</p> <p>23 A. To be a lookout?</p> <p>24 Q. Yeah. Like just tell them what to do, how to</p> <p>25 do it?</p>

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<p style="text-align: right;">Page 105</p> <p>1 A. No. You would tell them what you wanted, you 2 know, what you expected of them. And after one or two 3 times of doing it, unless it was fog or some really bad 4 weather situation, visibility situations, it was pretty 5 basic. It was just I want you to be there to be another 6 set of eyes, you know, in case I don't see something, you 7 know. Especially like New York Harbor and Mississippi, 8 you got a lot of little boats running around and they 9 don't care where you are, you know, they're going to 10 come. 11 Q. Yeah. So basically there's the whatever is in 12 the CFR, whatever is in say in our case and Carver's 13 case, the SMS and whatever the mate or the captain tell 14 the lookouts, is that kind of the world of lookout 15 training and requirements? 16 A. Yeah. I guess it would be a training and 17 depends on who you have as your deckhand and AB whether 18 they're competent enough to be a good lookout to know and 19 you got to train them. If they're not trainable, you get 20 rid of them. 21 Q. Okay. Now your opinion though doesn't include, 22 other than Mate Morrissey, what he did or didn't do, any 23 opinion as to an additional lookout, right, because in 24 this case there wasn't one; right? 25 A. Right. In my practice, in my standard of the</p>	<p style="text-align: right;">Page 107</p> <p>1 you're going to testify to at trial? 2 A. Sure. 3 Q. Now have you ever used autopilot in inland 4 waters? 5 A. Have I? 6 Q. Yes. 7 A. I really can't say I have. 8 Q. So it's fair to say that you actually don't 9 have any experience with using autopilot at all in inland 10 waters; correct? 11 A. No, certain inland waters. I'm trying to think 12 of where it would be a good example. Like the lower end 13 of the Hudson River from the battery up to the George 14 Washington Bridge, I forget how many miles it is, but 15 it's pretty wide open space and you might try autopilot. 16 I would never do it because there's rocks and all sorts 17 of and it's not that wide. 18 But I've used automatic pilot, you know, when 19 you're using it going in and out of rivers before you get 20 there. I mean, I know how an automatic pilot works. 21 Q. Yeah. But you -- the question is you haven't 22 used it in inland waters, actually used it; correct? 23 A. Correct. 24 Q. Okay. So is it fair to say the use of it as a 25 navigational tool in inland waters you don't -- you don't</p>
<p style="text-align: right;">Page 106</p> <p>1 industry that I know and not just oil barges of guys I 2 know who work on, you know, moving scows and stuff like 3 that, there's very little bit of first of all automatic 4 pilot going in and out the rivers and there's a lot of 5 times in the narrow channel, narrow river we would always 6 have a second lookout besides me in the wheelhouse. 7 Q. On oil barges; right? 8 A. Well, yeah, that's what I worked on. But I 9 know it was done on other pieces of equipment also, you 10 know. In New York Harbor especially because New York 11 Harbor was a very busy place and -- 12 Q. Yeah. Okay. We're not talking about New York 13 Harbor though for this case. We're talking about the 14 Elizabeth River; right? 15 A. Right. 16 Q. Okay. So -- 17 A. But if this guy had a lookout there, he might 18 not have hit the bridge. You know, he might have seen 19 that he was heading for the wrong side of the bridge and 20 said, hey, cap, move over. You know, that's what they're 21 there for to help you if you screw up, if you don't know 22 if something happened and you're not -- you don't see 23 what's happening, they're there to help you. They're 24 your second set of eyes. 25 Q. So is that one of your opinions, is that what</p>	<p style="text-align: right;">Page 108</p> <p>1 have any experience with that; correct? 2 A. Yeah, I'd say correct. 3 Q. Okay. 4 A. Well, I have to take that back. Running a 5 light tugboat say like sometimes I'd be in New York 6 Harbor, I'd be heading out east to Long Island Sound to 7 pick up a barge or whatever, then I'd be on automatic 8 pilot with a light tugboat not with a barge but just a 9 light tug. 10 Q. Okay. So you want -- you've done that how many 11 times? 12 A. I don't know. Quite a few. You run light 13 tugboat all throughout the harbors. San Francisco you -- 14 Q. You talking about a harbor tug? 15 A. Yeah. 16 Q. I mean, we talking about something like this 17 size? Is that a light tugboat? 18 A. That looks like a small fishing boat. Yeah. 19 But the tugboat I'm talking about was 150 foot long and 20 40 feet wide. 21 Q. I'm talking about a light tugboat. Does that 22 look -- 23 A. That's a light tugboat. 24 Q. -- like what I call a harbor tug? 25 A. You could call that a harbor tug I guess. It</p>

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<p style="text-align: right;">Page 109</p> <p>1 doesn't look like one.</p> <p>2 Q. I can tell you it's outboard profile and deck</p> <p>3 34 foot steel diesel tug, Gallagher Brothers, Sparkman</p> <p>4 and Stephens is the architect, 1954.</p> <p>5 A. Oh, that's, okay.</p> <p>6 Q. But that's -- I can tell you that's a tug, the</p> <p>7 question is does that look like a light -- what you call</p> <p>8 a light tug or a harbor tug?</p> <p>9 A. I mean, that looks like a yacht.</p> <p>10 Q. I'm talking about this one. It might look like</p> <p>11 a yacht, but I just read to you from the architect.</p> <p>12 A. Yeah, I know what you read, but that's not a</p> <p>13 tugboat.</p> <p>14 MR. JETT: Objection.</p> <p>15 BY MR. RODGERS:</p> <p>16 Q. So how big is a light tug?</p> <p>17 A. My light tug was 150 feet long, 40 foot wide</p> <p>18 drawing 22 feet in San Francisco.</p> <p>19 Q. What makes it a light tug?</p> <p>20 A. You don't have a barge, you're just a tugboat</p> <p>21 moving from point A to point B.</p> <p>22 Q. So it's not necessarily a harbor tug, it's</p> <p>23 because it's not moving a barge why you call it a light</p> <p>24 tug?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 111</p> <p>1 at the various invoices of the repairs made to the</p> <p>2 autopilot?</p> <p>3 A. Yes.</p> <p>4 Q. Did you recall in April that Ayer's came on</p> <p>5 board and did repairs to also replace the software --</p> <p>6 A. Yes.</p> <p>7 Q. -- of the autopilot, did you know that?</p> <p>8 A. Yeah. I read the -- I read what they did the</p> <p>9 same thing in March, GMT.</p> <p>10 Q. But you agree with me that based on at least</p> <p>11 Morrissey's, what we know now Morrissey's true story that</p> <p>12 the autopilot mechanics and electronics didn't fail, he</p> <p>13 failed to switch it and that your -- your testimony will</p> <p>14 be that it shouldn't have been on to begin with, is that</p> <p>15 a good summary of what you're going to testify to?</p> <p>16 A. Yes.</p> <p>17 MR. JETT: Object to form.</p> <p>18 BY MR. RODGERS:</p> <p>19 Q. So when you say that -- when you conclude, for</p> <p>20 instance, by not having the autopilot repaired and not</p> <p>21 restricting the use of the autopilot, Carver Management</p> <p>22 was the cause of the allision with the NPBL Bridge</p> <p>23 paragraph 13 of your findings. Do you see that?</p> <p>24 A. Yep.</p> <p>25 Q. All right. Based now on your testimony would</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. So it could be a very large tug?</p> <p>2 A. That's what the one -- that's what the Golden</p> <p>3 State was. And in New York Harbor we had like 135 foot</p> <p>4 tugs that if the barge is loading or discharging, you</p> <p>5 might leave it to go get another barge or go dock a ship</p> <p>6 or do some other thing and you'd be running in the harbor</p> <p>7 and in that situation a lot of times you would be on</p> <p>8 autopilot.</p> <p>9 Q. Without a barge?</p> <p>10 A. Without a barge.</p> <p>11 Q. So it's fair to say you don't have any</p> <p>12 experience pushing or towing a barge with an autopilot in</p> <p>13 any inland river; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. So it's fair to say that as far as the</p> <p>16 navigational use of an autopilot in an inland river with</p> <p>17 pushing or towing a tug you don't have any experience in;</p> <p>18 is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right. You opined on the post incident</p> <p>21 reporting situation. Do you recall that in your report?</p> <p>22 A. Where? I don't know what you're talking -- I</p> <p>23 don't recall what you're talking about.</p> <p>24 Q. Look at your report. I'm trying to speed</p> <p>25 things up. That's all right. By the way, did you look</p>	<p style="text-align: right;">Page 112</p> <p>1 you like to amend that as you sit here today to take out</p> <p>2 the part by not having the autopilot repaired and just</p> <p>3 amend it to by not restricting the use of the autopilot?</p> <p>4 Is that fair to say that that should be --</p> <p>5 based on your testimony, that should be amended to take</p> <p>6 out by not having the autopilot repaired?</p> <p>7 MR. JETT: Objection.</p> <p>8 A. No. He should have had the autopilot should</p> <p>9 have been repaired.</p> <p>10 BY MR. RODGERS:</p> <p>11 Q. But you've already conceded and agreed that</p> <p>12 that's not what happened with the autopilot, it didn't</p> <p>13 malfunction. The mate malfunctioned; correct? Mate</p> <p>14 Morrissey malfunctioned?</p> <p>15 MR. JETT: Objection.</p> <p>16 A. The point is it should never have been on to</p> <p>17 begin with in my opinion.</p> <p>18 BY MR. RODGERS:</p> <p>19 Q. And I understand --</p> <p>20 A. You've got --</p> <p>21 MR. JETT: Sorry, one at a time.</p> <p>22 MR. RODGERS: Can you get any louder, Zach, I</p> <p>23 can't always hear you?</p> <p>24 MR. JETT: Sorry. I'm just advising him one at</p> <p>25 a time. All right. Did you finish your answer?</p>

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1 THE WITNESS: I forget the question.
2 MR. JETT: Can you read back the question and
3 make sure he answered?
4 MR. RODGERS: No. I'm going to rephrase it.
5 BY MR. RODGERS:
6 Q. If you go to 13, we've already spent a lot of
7 time today where your issue now with the autopilot
8 appears, and again correct me if I'm wrong, that it
9 shouldn't have been being used at the time of being used;
10 correct?
11 A. Correct.
12 Q. So you're sticking with the part of 13 that
13 says not restricting the use of the autopilot; right?
14 A. Yes.
15 Q. You're saying that's harbor management, in your
16 opinion, that's their fault and you're saying that was a
17 cause or part of the cause of the allision; correct?
18 A. Yes. And the company not having it repaired
19 and then letting them use it is bad management. You're
20 sending out a vessel --
21 Q. You can't --
22 THE COURT REPORTER: I can't.
23 MR. RODGERS: Sorry, sorry, Yvette.
24 MR. JETT: You finish and then Jim will ask
25 another question.

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1 BY MR. RODGERS:
2 Q. You can finish.
3 A. I'm finished.
4 Q. We've already discussed this ad nauseam on my
5 part, not yours, that paragraph four which after you read
6 all the different documents: "The officer of the watch
7 Captain James Morrissey failed to properly disengage the
8 autopilot and did not switch to manual steering
9 non-follow-up mode." Do you see that?
10 A. Yes, yes.
11 Q. Okay. And that was Mate Morrissey's error;
12 correct?
13 A. Yes.
14 Q. It was his navigational error; correct?
15 A. Correct.
16 Q. It was not the autopilot failing and the rudder
17 going hard over; right? We've already established that
18 you agree that didn't happen; correct?
19 A. Yes.
20 Q. Okay. So it more or less makes whether or not
21 the autopilot was repaired correctly or not a moot point,
22 does it not?
23 A. No.
24 Q. Because it's not --
25 A. Not to me.

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1 Q. Are you saying the autopilot failed, that it
2 went hard over?
3 A. I'm just saying that the autopilot should never
4 have been on.
5 Q. I get that and I'm accepting that as your
6 opinion. And I just want to make sure that 13, which has
7 two different opinions, not different, I'm sorry, two
8 reasons, that the first reason is not actually
9 applicable.
10 A. I can't --
11 Q. And you're going to amend it or we have to go
12 through this at trial. Because the second part I
13 understand is your position and you're holding that
14 position that we never should have used it, we should
15 have restricted it.
16 I'm asking you if you are just by your
17 testimony going to amend 13 and withdraw the part by not
18 having the autopilot repaired?
19 A. No. I'm not amending it because we don't know
20 what Morrissey did or what really happened. We haven't
21 been able -- he didn't testify for any deposition or
22 anything and he changed his story according to what the
23 records and paperwork I get.
24 Q. So what are you -- I don't see where you can be
25 consistent with that because you've adopted or you

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1 concluded that it was Mate Morrissey's failure to
2 properly disengage the autopilot and not switch to manual
3 steering.
4 So either you're with that or you're not. And
5 if you're not with that and you want to say that somehow
6 that the autopilot failed, then we'll go into every
7 single invoice, we'll take an hour or two to go into
8 that. But it just seems like a moot point if you've
9 already conceded, or not conceded, but agreed that his
10 final statement, which was reflected I believe in 2692,
11 but also other areas, you've adopted the fact that it did
12 not -- it did not go hard left, which was his original
13 story, it in fact he messed up. And that's confirmed by
14 the Rose Point as you've already agreed.
15 So I don't understand why you would want to
16 continue to say that -- alleging that the autopilot was
17 not repaired by Carver was one of the causes of the
18 allision. Or were you willing to amend it and take that
19 portion of 13 out?
20 On this one I'll even give you another thing,
21 I'll let you discuss it with your lawyers. Is that okay,
22 Zach? You want him to talk to you outside my?
23 MR. JETT: That's fine. You can continue.
24 He'll answer the question. I mean --
25 MR. RODGERS: He's looking. I know he's

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1 reading and thinking. So take your time.
2 A. It's hard to say. I just feel -- maybe I have
3 to reword it or something.
4 BY MR. RODGERS:
5 Q. Well, take your time. I'm in no rush. And if
6 you want, I don't care however we get there, if you want
7 a break to do it, but I want to get it right. I think
8 you've been up front with me all day so. This is not
9 a -- it's not an exercise in trying to trick you or
10 anything. I'm writing something so don't feel rushed. I
11 have some other questions I may have for you.
12 A. I have to reword it somehow where it says that.
13 Can I take a five minute break?
14 Q. Yes. Please do.
15 A. I want to figure out how to reword it.
16 Q. And if you want to talk to your attorney, I'm
17 agreeing that that's okay with these guys.
18 A. Yeah. I need to take a break, think about
19 this.
20 MR. JETT: Okay. Thank you.
21 (A break was taken.)
22 BY MR. RODGERS:
23 Q. Do you remember the question or you want me to
24 repeat it or you ready to supplement it or whatever?
25 A. I'm not going to supplement anything. I'm

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1 going to keep it the way it is because I can't say if the
2 autopilot did or did not have a failure. My main reason
3 being is why was the tugboat where it was? Why was he
4 way over to the left instead of being in the center of
5 the channel?
6 Q. I --
7 A. And being that -- wait a minute, let me finish.
8 And being that Morrissey made the statement initially
9 that he went hard left, we don't know what his statement
10 on the 2692 is true or not. We don't know if the company
11 did it or who did it, all I know is that he hasn't been
12 here to give testimony to let us know what happened in
13 reality.
14 So, in my opinion, the company should have
15 repaired the autopilot before they let anybody do it.
16 Since they didn't, they should have instructed the crew
17 not to use the autopilot.
18 Q. Okay. So did you look at the autopilot repair
19 records?
20 A. Yeah. What does that got to do with anything?
21 Q. Well, you're saying they didn't repair it, but
22 in fact --
23 A. No, they didn't repair it.
24 Q. Can I finish? I need to finish, Captain.
25 A. I'm sorry, go ahead.

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1 Q. I need to finish. The evidence clearly shows
2 they repaired it in April; correct?
3 A. Yes.
4 Q. So you can't say as you sit here today that
5 they did not repair it based on those invoices; correct?
6 MR. JETT: Object to the form. You can answer.
7 A. No, because they had incidents in May and
8 didn't get them repaired.
9 BY MR. RODGERS:
10 Q. But you can't say they did not repair it?
11 A. How can I say they didn't repair it if they had
12 incidents again in May, two incidents where the vessel
13 went hard left and turned around on itself and went into
14 the heavy weather and they did nothing about that?
15 Q. Okay. So you're withdrawing your conclusions
16 now I think. Either you're going to accept his first
17 statement, which everybody knows was a lie because he
18 testified at the Coast Guard something differently and
19 you're going to accept that and you're going to reject
20 the statement he made which is reflected on the 2692? I
21 just want to know where you stand.
22 MR. JETT: Objection.
23 A. Yep. I disagree with the 2692 which shouldn't
24 even be in there.
25

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1 BY MR. RODGERS:
2 Q. Okay. So you're going to withdraw your
3 findings?
4 A. No.
5 Q. You going to redo them on your --
6 A. No. Why?
7 Q. What are you going to do here?
8 A. My number four findings says exactly what it
9 says.
10 Q. So you're still going to stay with your
11 finding: "The officer of the watch Captain James
12 Morrissey failed to properly disengage the autopilot and
13 did not switch the manual steering (non-follow-up mode)
14 in a combined navigational -- confined navigational
15 channel resulting in a loss of directional control?"
16 A. Right.
17 Q. Is that your -- is that your finding?
18 A. Yes.
19 Q. Okay. And you don't have a problem with it
20 being inconsistent with the first part of paragraph 13?
21 MR. JETT: Object to the form.
22 A. No, I don't.
23 BY MR. RODGERS:
24 Q. Okay. Now what part of the autopilot should
25 have been repaired?

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<p style="text-align: right;">Page 121</p> <p>1 A. How do I know?</p> <p>2 Q. I don't know.</p> <p>3 A. I'm not an autopilot repairman.</p> <p>4 Q. Okay. Okay. Let's take a deep breath. You're</p> <p>5 saying it should have been repaired and I'm asking you</p> <p>6 what part of the autopilot should have been repaired,</p> <p>7 which I'm entitled to ask.</p> <p>8 A. When the repairman looked at it and wondered</p> <p>9 why did it go hard left. Not here when it went hard left</p> <p>10 in May, in the incident in May when the tug turned around</p> <p>11 and almost hit the barge.</p> <p>12 Q. You've agreed though now that looking at the</p> <p>13 Rose Point it didn't go hard left; correct? You've</p> <p>14 already testified to that under oath, do you want to</p> <p>15 retract that?</p> <p>16 A. I'm not talking about it going hard left here.</p> <p>17 I'm talking about it going hard left in May.</p> <p>18 Q. So it went hard left in May, but it didn't go</p> <p>19 hard left on the day of the incident. You would agree</p> <p>20 with that?</p> <p>21 A. It doesn't appear to be, but I don't know. I'd</p> <p>22 like to talk to Morrissey and get his input.</p> <p>23 Q. We'd all like to talk to Morrissey, but we may</p> <p>24 never get to talk to Morrissey. But the bottom line is</p> <p>25 you looked at the Rose Point; right?</p>	<p style="text-align: right;">Page 123</p> <p>1 BY MR. RODGERS:</p> <p>2 Q. And according to the Rose Point data; correct?</p> <p>3 A. Rose Point, yeah, yes.</p> <p>4 Q. So I'm not talking about speculation. What you</p> <p>5 have in front of you thus far without talking to</p> <p>6 Morrissey and none of us have except Mr. Chapman who was</p> <p>7 at his hearing and knows what he said, but I wasn't. I</p> <p>8 hadn't been hired yet. But based on what you've been</p> <p>9 given, which are the 2692 and other documents and the</p> <p>10 Rose Point data, there's no indication that the vessel</p> <p>11 went hard over; correct?</p> <p>12 MR. JETT: Objection.</p> <p>13 A. Correct.</p> <p>14 BY MR. RODGERS:</p> <p>15 Q. So there's no indication, no evidence that</p> <p>16 you've been able to review that the incident in May with</p> <p>17 the autopilot, that same exact incident hard over</p> <p>18 occurred on June 15th, 2024; correct?</p> <p>19 MR. JETT: Objection.</p> <p>20 A. Correct. But I still don't -- I still say it</p> <p>21 could have happened. It's just hard to say because we</p> <p>22 don't know what this guy did and what he said. I don't</p> <p>23 believe in what they said on 2692. The company wrote</p> <p>24 that report.</p> <p>25</p>
<p style="text-align: right;">Page 122</p> <p>1 A. Yes.</p> <p>2 Q. You have no reason to believe that that's not</p> <p>3 correct; right?</p> <p>4 A. That he went hard left, no. But maybe that he</p> <p>5 couldn't switch to autopilot. I mean, autopilot to NFU.</p> <p>6 Because why was he where he was? That's what I want to</p> <p>7 know. If the autopilot was working correctly and doing</p> <p>8 everything properly, why was he on the left side of the</p> <p>9 channel not even close to the center of the bridge? What</p> <p>10 put him there? Was he even there? Was he paying</p> <p>11 attention? What happened? There's no reason for him to</p> <p>12 be on that side of the river.</p> <p>13 Q. Do you want me to testify? You're asking me</p> <p>14 questions.</p> <p>15 A. I'm just saying. I'm sticking with what I got</p> <p>16 here.</p> <p>17 Q. Do you agree that the Rose Point data shows</p> <p>18 that it did not go hard over?</p> <p>19 A. Yes. And I don't say it went hard over here.</p> <p>20 Q. So whatever happened in May where it went hard</p> <p>21 over, that particular issue did not happen on June 15th,</p> <p>22 2024; correct?</p> <p>23 MR. JETT: Object to the form.</p> <p>24 A. Apparently not according to the last statement</p> <p>25 made on the 2692.</p>	<p style="text-align: right;">Page 124</p> <p>1 BY MR. RODGERS:</p> <p>2 Q. Do you believe what he said to the Coast Guard</p> <p>3 is close to the truth?</p> <p>4 A. I haven't seen anything from what he wrote to</p> <p>5 the Coast Guard.</p> <p>6 Q. I know. You can ask Mr. Chapman, he was there,</p> <p>7 I wasn't. Okay. But he's not sending me anything so I</p> <p>8 don't know. We do have a subpoena to the Coast Guard,</p> <p>9 I'll let you know and the NTSB and we may have to make a</p> <p>10 motion to the judge to ask for those transcripts.</p> <p>11 Okay. So the one person who knows what he did</p> <p>12 is AWOL. It's nobody's fault except Mr. Morrissey and</p> <p>13 that's the way it is. You've been asked to come in and</p> <p>14 opine on the evidence in front of you. Okay?</p> <p>15 A. Right.</p> <p>16 Q. And I'm not going to tell you your job as an</p> <p>17 expert, that's your lawyer's job. But that's the</p> <p>18 questions I'm asking. And I understand your frustration</p> <p>19 with not being able to ask Mr. Morrissey a few questions.</p> <p>20 You can join the line. It's long. All right.</p> <p>21 So let's move on to the few other findings.</p> <p>22 Oh, just two questions. When did your final license</p> <p>23 expire in? Do you remember what year?</p> <p>24 A. 2012.</p> <p>25 Q. Okay. And which license was that?</p>

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<p style="text-align: right;">Page 125</p> <p>1 A. All of them. I mean, they were all combined. 2 There's only one. 3 Q. Oh, okay. And then did you look at the COI, 4 the certificate of inspection? 5 A. Yes. 6 Q. And would you agree that the manning on the 7 Mackenzie Rose on the day of the incident was consistent 8 with the COI? 9 A. Yes. 10 THE COURT REPORTER: With the C? 11 THE WITNESS: The certificate of inspections. 12 MR. RODGERS: I can't hear the objections if 13 that's you, Zach. 14 MR. JETT: The court reporter was asking what 15 the COI was. 16 BY MR. RODGERS: 17 Q. It's the certificate of inspection; correct? 18 A. Yes. 19 MR. RODGERS: So you might want to put that in, 20 reporter, certificate of inspection. 21 THE COURT REPORTER: Okay. 22 MR. RODGERS: COI is the acronym, I apologize. 23 BY MR. RODGERS: 24 Q. All right. So let's go through your findings. 25 Try to get through this. I know it's been a long day for</p>	<p style="text-align: right;">Page 127</p> <p>1 A. Right. 2 Q. Okay. All right. I'm just trying to clear 3 everything up on your findings because I don't want us to 4 be confused at trial. If you go to 11, you want to read 5 that for me? 6 A. "The Coast Guard was not promptly notified of 7 the allision, in violation of 46 blah, blah, blah. This 8 delayed official investigation and post incident drug and 9 alcohol testing and created potentially dangerous 10 conditions for the Norfolk and Portsmouth Belt Line 11 Railroad Company and the public at large." 12 Q. Okay. So that statement is a finding which you 13 would agree it has to do with actions or inactions that 14 occurred after the incident; right? 15 A. Yes. Immediately after. 16 Q. So 11 doesn't -- is not something that you're 17 testifying caused the incident; right? It's something 18 that happened post incident; am I correct in that? 19 A. Yes. 20 Q. Okay. 21 A. It shows the inability of Carver to do the 22 right -- did not do the right thing by notifying the 23 Coast Guard. 24 Q. And I understand that and you're free to tell 25 the judge that at trial. And he's free to do what he</p>
<p style="text-align: right;">Page 126</p> <p>1 both of us. Not as long as a midwatch maybe, but close. 2 Do you have any reason to believe based on the 3 evidence that you've been able to look at that Captain 4 Miller knew that Mate Morrissey was going to fail to turn 5 off the switch on the autopilot? 6 A. I know nothing about Captain Miller, he's dead, 7 can't ask him. 8 Q. Is there anything in the evidence that you've 9 seen that leads you to believe that he knew that that was 10 going to happen when he went off to the rack? 11 A. How would anybody know it's going to happen? 12 Q. Okay. So he didn't know it was going to 13 happen. Would you agree -- 14 A. I can't speak for him, I don't know him and I 15 don't know what he was thinking. 16 Q. Okay. So if you go to three in your findings, 17 right. "The deck logbook entry was inaccurate and 18 misleading, stating the unit had maneuvered onto 19 fendering and away from the bridge when in fact it struck 20 the fixed western structure directly." Do you see that? 21 A. Yes. 22 Q. That's your finding, but would you agree that's 23 not one of the findings that you're saying caused the 24 incident; right? You're just making a finding on the 25 fact?</p>	<p style="text-align: right;">Page 128</p> <p>1 wants with that. Number 12 I will read it. "Post 2 incident accounts from multiple crew members were 3 inconsistent, with discrepancies and timing, actions 4 taken, and observations." Do you see that? 5 A. Yes. 6 Q. You'd agree that that's your finding on post 7 incident issues; correct? 8 A. Yes. 9 Q. Not a finding that had anything to do with the 10 cause of the incident; am I correct in that? 11 A. Yes. It's after the incident. 12 Q. Okay. We've already gone through 13. And 14 13 let's see. 14 I think we've gotten into the substance of 14 it. 15 A. Yeah. 16 Q. That is your conclusion on the failures you're 17 saying it's all three, navigational, procedural and 18 managerial; right? 19 A. Correct. 20 Q. Okay. And then in 15 you're saying that 21 Mackenzie Rose was unseaworthy. Do you see that? 22 A. Yes. 23 Q. Was at the time. You understand seaworthiness 24 is a legal term of art in the context of maritime law? 25 A. Yes.</p>

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<p style="text-align: right;">Page 129</p> <p>1 Q. So you understand you're making a legal 2 conclusion? 3 MR. JETT: Object to the form. 4 BY MR. RODGERS: 5 Q. Or are you using it in another manner? 6 A. I'm using it to say the vessel was not 7 seaworthy. If that's legal, I guess. I don't know if 8 that's legal or not. 9 Q. You don't have to listen to me. If you're 10 using it in another manner, you can tell us. I'm telling 11 you it's a legal term of art in this particular lawsuit, 12 it's one of the things the judge is going to determine. 13 So if you're using it in another manner, you 14 can tell us. I just want to be clear that I'm not sure 15 why you're saying it's unseaworthy. 16 A. Because of the procedures -- regarding using 17 the autopilot, not having a lookout during bridge 18 transits, the known issues with the autopilot, no 19 repairs. And Captain Morrissey's prior allision where 20 nothing was done to correct him or discipline him or show 21 him what he did wrong. And the crew, in my opinion, was 22 mostly brand new. I think Mr. Porter was the only guy 23 that had been there any length of time, everyone else was 24 relatively new in the last seven months so. 25 Q. New to the voyage or new to the company?</p>	<p style="text-align: right;">Page 131</p> <p>1 BY MR. RODGERS: 2 Q. Okay. But they were trained from time to time 3 by either the captain or the mate; correct? Onboard? 4 A. According to the Carver, yes, according to the 5 emergency drills. 6 Q. And according to the deckhands they actually 7 testified and Mr. Baldassare testified, do you recall 8 that, that there was training on board? 9 A. Yes, onboard. 10 Q. So you would agree that it cannot be said that 11 they had no training; right? You would agree that that's 12 not true? It's just you're saying they didn't have 13 training pursuant to what you think training should be? 14 A. Right. 15 Q. Is that a fair statement? 16 A. Okay. 17 Q. Is that fair? 18 A. Yes. 19 Q. Have I got it right? 20 A. Yes. 21 Q. "Carver should not have allowed this tug to 22 sail with this crew." Do you see that? 23 A. Yes. 24 Q. That's a pretty strong statement. 25 A. Yes, it is.</p>
<p style="text-align: right;">Page 130</p> <p>1 A. New to the company. 2 Q. Mr. Miller was new to the company? 3 A. Yeah. I don't have a beginning date for him. 4 There was nothing in his records. 5 Q. How about Mr. Morrissey? 6 A. Morrissey was hired in like December. 7 Q. What about Mr. Jarkeis Morrissey, the deckhand? 8 A. He was hired in April. 9 Q. And what about Mr. McGrath the engineer? 10 A. He was -- he might have been December or 11 November, I don't have the exact dates. 12 Q. And did you establish whether they had 13 experience before they came to Carver and Mackenzie Rose? 14 A. I would imagine they did because they had 15 licenses, but I have -- there's no records of what they 16 did before in any of the information I read. 17 Q. So you're saying the minute somebody changes 18 vessels and owners that they're not qualified? 19 MR. JETT: Object to form. 20 A. No. Excuse me? 21 MR. JETT: Go ahead. 22 A. No, I'm not saying that they're not qualified. 23 I just don't think that they were trained to be a proper 24 crew to operate this vessel. 25</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. What do you mean by that? 2 A. I just don't think they were qualified to take 3 the vessel where they were going as shown by what 4 happened hitting the bridge. 5 Q. So every time there's a maritime incident or an 6 accident regardless of the cause is it your conclusion 7 that that vessel should not have sailed to begin with? 8 Is that the way you look at maritime casualties? 9 A. No, that's not what I'm saying. I'm talking 10 about this crew. 11 MR. RODGERS: All right. I need about ten 12 minutes. I'm going to check my documents and other 13 things because I might be done. Don't take my word 14 for it. But I'm going to just check my documents 15 and things that I might have missed and let's 16 reconvene in ten. Okay, Captain? 17 THE WITNESS: Okay. 18 (A break was taken.) 19 MR. RODGERS: Okay. So I'm done. I want to 20 thank you for showing up and going through all the 21 questions. I'm sure it's not fun for you. And 22 just, Reporter, before we go off can I get an 23 expedited copy including a mini? 24 MR. JETT: Yeah, I'm going to have some 25 redirect on that.</p>

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1 MR. RODGERS: Sorry, sorry.
2 MR. JETT: That's all right. I don't know if
3 anyone else did.
4 MR. RODGERS: I don't know who is talking.
5 MR. JETT: Zach. I'm in with captain.
6 MR. RODGERS: Yeah, you're hiding. All right.
7 Go ahead.
8 MR. JETT: I'm right here. I'm right next to
9 him.
10 MR. RODGERS: I just see a big Yeti bottle. Go
11 ahead.
12 MR. JETT: We're on a very small screen.
13 THE WITNESS: New York Giants.
14 CROSS EXAMINATION
15 BY MR. JETT:
16 Q. All right. Captain Lewis, I've just got a
17 couple clean up questions for you. Can you hear me all
18 right out in cyberspace everyone? Can you hear me Jim?
19 MR. RODGERS: I can now hear you, yes.
20 MR. CHAPMAN: All good, yes.
21 BY MR. JETT:
22 Q. All right. Captain, you were asked some
23 questions about physically inspecting the mainline
24 bridge.
25 A. Yes.

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1 Q. Do you remember those questions? And you, in
2 fact, did not actually go out to see the bridge as part
3 of your investigation of this case; is that right?
4 A. Correct.
5 Q. Did you have an opportunity to look at
6 photographs?
7 A. Yes.
8 Q. All right. Did you have an opportunity to look
9 at drone images of the bridge?
10 A. Yes.
11 Q. How about Google Earth images?
12 A. Yes.
13 Q. Do you feel that you fairly apprised yourself
14 of what the bridge looked like, its dimensions and its
15 surroundings?
16 A. Yes.
17 Q. Would going to the bridge physically have done
18 anything to impact your decisions in this case?
19 A. No.
20 Q. You were asked some questions about any
21 assessment that you made of Captain Miller. Do you
22 recall those questions?
23 A. Yes.
24 Q. And did you or did you not make any assessment
25 of Captain Miller?

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1 A. In what sense?
2 Q. Well, did you -- did you evaluate what Captain
3 Miller did either in response to the allision or anything
4 else?
5 A. The only thing I said about Captain Miller that
6 I know is his statements and the fact he had told the
7 company to call the Coast Guard, which he could have
8 done, and nobody apparently notified the Coast Guard at
9 that time when the incident happened.
10 Q. Is that something you would expect the captain
11 to do following an allision?
12 A. A captain can do that.
13 Q. Okay. And Mr. Miller, Captain Miller did not
14 do that in this scenario, did he?
15 A. No.
16 Q. We've not been able to depose Mr. Miller
17 because regrettably he's deceased; is that right?
18 A. Yes.
19 Q. And, likewise, you've mentioned we've not been
20 able to -- you've not been able to read a deposition
21 testimony of Mate Morrissey; right?
22 A. Correct.
23 Q. And that's because he failed to show for his
24 deposition; correct?
25 A. Twice.

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1 Q. Okay. All right. Based on the evidence that
2 you've reviewed, how many witnesses are you aware of to
3 the allision?
4 A. According to the statements, the only one that
5 would have actually seen it would have been Morrissey,
6 would have been the mate.
7 Q. Okay. Now you were asked some questions in
8 your report about some of the Simrad warnings?
9 A. Yes.
10 Q. About the use of autopilot?
11 A. Uh-huh.
12 Q. Is Simrad the manufacturer of the autopilot
13 that was on board the Mackenzie Rose at the time of the
14 allision in June of 2024?
15 A. Yes.
16 Q. And did you have an opportunity to review the
17 manual in that case?
18 A. Yes.
19 Q. All right. Now in your review of the manual
20 did you identify instances where the autopilot should not
21 be used?
22 A. Yes.
23 Q. Okay. What did you identify as instances where
24 the autopilot should not be used? And I'm specifically
25 referring to page six of your report, sir.

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<p style="text-align: right;">Page 137</p> <p>1 A. Okay. Basic safe operation with the autopilot, 2 basic operation. I have highlighted in heavy traffic 3 areas or in narrow waters. 4 Q. Okay. 5 A. Which I think the tug and barge was in narrow 6 waters. "Do not leave the helm unattended and always 7 switch the autopilot to standby and reduce speed in due 8 time to avoid hazardous situations, verify regular 9 intervals the course and position of the vessel. And use 10 of autopilot in confined inland waterways, particularly 11 when approaching a fixed structure such as a railroad 12 bridge, violates best practices and specific warnings 13 found in the Simrad manual. The autopilot used in the 14 upper wheelhouse on the tug Mackenzie Rose at the time of 15 the allision was the Simrad." 16 Q. Okay. And so specifically as to the first 17 highlighted bullet point under do not use automatic 18 steering when, you were asked about in heavy traffic; 19 right? 20 A. Right. 21 Q. Were you asked about in narrow waters? 22 A. No. 23 Q. All right. So is it your opinion the autopilot 24 should not have been used while transitioning the 25 Mainline Bridge in the Elizabeth River?</p>	<p style="text-align: right;">Page 139</p> <p>1 2692. There's two separate 2692s filled out; is that 2 right? 3 A. Correct. 4 Q. All right. Now I noticed you didn't quote or 5 other than reference the 2692, either of them, in your 6 report; is that right? 7 A. Yes. 8 Q. Why was that? 9 A. Because you're not allowed to quote. You can 10 reference but you can't copy or do anything with the 2692 11 according to the law. 12 Q. Okay. Well, let me ask you a little bit 13 differently so it's clear. Did the -- did you rely on 14 the 2692 as a basis in forming your expert opinion? 15 A. Partially. 16 Q. Okay. 17 A. I mean, I would say partially only because I 18 read it. 19 Q. Okay. 20 A. I mean. But as far as the 25A and 25B were I 21 couldn't -- I couldn't use that as a reference to making 22 my report. 23 Q. Okay. So you couldn't rely on that in making 24 your report? 25 A. Correct.</p>
<p style="text-align: right;">Page 138</p> <p>1 A. Yes, it should not have been used. 2 Q. Okay. Why not? 3 A. Because you should be on hand steering to me in 4 any narrow waters and the manual states not to do that. 5 Q. Okay. In your review of this allision incident 6 and understanding that the vessel was in autopilot at the 7 time, were you able to determine if Mate Morrissey or 8 anyone else in the vessel verified at regular intervals 9 the course and position of the vessel? 10 A. No. 11 Q. Okay. Is there any evidence of that that you 12 saw? 13 A. Of the vessel? 14 Q. Of a review at regular intervals of the course 15 and position of the vessel. 16 A. I don't -- I don't think so. 17 Q. Okay. 18 A. No, I don't recall giving exact positions. 19 Q. If in your expertise and in your opinion if 20 someone on board, either Mate Morrissey or someone else, 21 had reviewed the position of the vessel at any regular 22 interval, do you think they would have been able to 23 determine they were headed towards the Mainline Bridge? 24 A. Yes. 25 Q. Okay. You were asked some questions about the</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Okay. I'm not sure if you were asked this, I 2 jotted this down, so forgive me if you were. There were 3 a lot of questions. Did you ever push a tug without a 4 barge? 5 A. Yes. 6 Q. Okay. You did. That's right, up in the Hudson 7 River you testified. 8 A. Anywhere I ran a tugboat, you always ran a 9 light tugboat. 10 Q. All right. You were asked some questions about 11 captain -- Captain Sam Stephenson's survey of other 12 harbor pilots. Do you recall those questions? 13 A. Yes. 14 Q. What's a harbor pilot's role? 15 A. Usually they meet a vessel at the sea buoy and 16 take them into the port and a lot of ports they do the 17 docking of the vessel also. 18 Q. Okay. Do they actually sail the vessel on the 19 way in or are they guiding the captain to port? 20 A. They're an adviser, you know. A pilot is not 21 the captain. The captain is always the captain except in 22 the Panama Canal. And the pilot he's there to assist and 23 make sure the ship does the right thing. 24 Q. Okay. 25 A. Is heading in the right direction.</p>

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<p>1 Q. So who has the final say if there's a captain 2 aboard a vessel? 3 A. The captain. 4 Q. How about if there's a pilot aboard the vessel 5 with a captain? 6 A. He's an adviser to the captain. 7 Q. But the captain has the final say? 8 A. Yes. 9 Q. All right. So would a survey of harbor pilots 10 have assisted you in forming your opinion in this case? 11 A. No. 12 Q. Okay. All right. And that's as to a pilot's 13 opinion for the appropriate use of an autopilot in the 14 Elizabeth River; right? 15 A. Correct. 16 Q. You were asked some questions about Mate 17 Morrissey and his actions prior to the allision and one 18 of them referenced his position in the upper wheelhouse. 19 Do you know for certain if Mr. Morrissey was in 20 the upper wheelhouse at the time of the allision? 21 A. No. 22 Q. Do you know where Mr. Morrissey was at the time 23 of the allision? 24 A. No. 25 Q. Okay. And that's because we don't have</p>	<p>1 BY MR. JETT: 2 Q. Okay. And do you know where that video was 3 taken? 4 A. It looks like a cement dock that was there. 5 Q. Okay. So shoreside? 6 A. Yes. 7 Q. All right. And that's when we talked about the 8 black smoke, you were referring to that video? 9 A. Yes. 10 Q. All right. And I asked you a question about 11 Captain Sam Stephenson's report. Did you have an 12 opportunity to review that report? 13 A. Yes. 14 Q. And, in fact, we reviewed that in preparation 15 for your deposition here today; is that right? 16 A. Yes, we did. 17 Q. Okay. I'm going to direct your attention, I 18 don't know how to pull it up on the screen, but page 16 19 of his report. Page 16 of Captain Sam Stephenson's 20 report has an image. I'll just put it in front of you. 21 Have you seen this image before? 22 A. Yes. 23 Q. Okay. 24 A. And I reviewed it. 25 Q. And you reviewed it. And it depicts a still</p>
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<p>1 firsthand testimony from anyone who witnessed 2 Mr. Morrissey's whereabouts or from Mr. Morrissey 3 himself; is that right? 4 A. Correct. 5 Q. You were asked a few questions early on about 6 the video and black smoke that you saw. Do you recall 7 that? 8 A. Yes. 9 Q. Just for clarity I don't think we identified 10 which video you were talking about. And you've seen more 11 than one video in this case; is that fair? 12 A. Yes. I think I have it referenced in my 13 report. 14 Q. Okay. If you could find that and just confirm 15 which video we were talking about when you described 16 seeing black smoke just so we're clear on the record. If 17 you reference page three. 18 A. It was three? 19 Q. Yeah. 20 MR. RODGERS: Which number? 21 MR. JETT: Page number three on his report I 22 believe was the video that was referenced. I just 23 wanted to clear it up for the record. 24 A. Here it is. The video NPBL000201-2024-06-15. 25 Allision events surveillance video one.</p>	<p>1 frame with three different lines, a yellow line, a blue 2 line and a red line; is that right? 3 A. Correct. 4 Q. Okay. And it's my understanding that this was 5 plotted based on Captain Stephenson's report it was 6 plotted from the Rose Point data. Is that your 7 understanding? 8 MR. RODGERS: Objection, objection, foundation. 9 MR. JETT: Okay. Well, we can refer back to 10 Captain Stephenson's report. 11 MR. RODGERS: You're asking him to testify what 12 Captain Stephenson meant. 13 MR. JETT: No. 14 MR. RODGERS: Other than what's in writing. 15 MR. JETT: No, no, I just want to ask him a 16 clarifying question about that. 17 MR. RODGERS: All right. 18 BY MR. JETT: 19 Q. You testified earlier in response to some 20 questions that it did not appear that the vessel had gone 21 hard left at any time prior to the allision. Do you 22 recall that testimony, sir? 23 A. Yes. 24 Q. Okay. In looking at that still image from 25 Captain Stephenson's report, does it appear to you that</p>

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1 the vessel went left at any point after it goes under the
2 south Jordan River Bridge and before the allision event?
3 A. Well, as it passes through the Jordan Bridge it
4 heads left of the center draw of the NPBL Bridge and
5 about two minutes in it makes a hard -- not a hard left,
6 but it makes a left hand turn towards the outside of the
7 channel.
8 Q. Okay.
9 A. Of the bridge.
10 Q. All right. So does it appear that the vessel
11 did go left prior to the allision with the Mainline
12 Bridge?
13 A. Yes.
14 MR. RODGERS: Objection. Objection to form.
15 BY MR. JETT:
16 Q. Okay.
17 A. It started left coming out through the bridge
18 and then it went left at 162624 towards where the
19 allision happened.
20 Q. Okay.
21 A. So it did go left.
22 Q. Okay. You were asked some questions about the
23 sea worthiness and the definition of seaworthy. Do you
24 recall that, Captain?
25 A. Yes.

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1 Q. When you were using the term seaworthy, does
2 that have a certain meaning to you as a captain?
3 A. Yes.
4 Q. Okay. What does seaworthiness mean to you?
5 A. A vessel is equipped and ready to do its job,
6 operate safely.
7 Q. Okay.
8 A. It's ready to go to sea.
9 Q. Okay. And you opined one of your opinions was
10 that in your opinion that the Mackenzie Rose was not
11 seaworthy at the time of the allision; is that right?
12 A. Yes.
13 Q. Okay. And there was some back and forth about
14 that, but I want to give you an opportunity to explain.
15 What did you mean when you opined that the vessel was not
16 seaworthy prior to the allision?
17 A. To me proper training, lack of policies and
18 procedures regarding the autopilot. The fact that they
19 didn't repair the autopilot. There was no lookout during
20 the bridge transit, which was standard SOP for me when I
21 worked. And also I just felt that the crew was not
22 trained enough and not prepared to be -- to take that
23 vessel to sea.
24 Q. It sounds like those are personnel related
25 issues as to --

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1 MR. RODGERS: Objection.
2 BY MR. JETT:
3 Q. -- your definition of seaworthiness?
4 A. Yes.
5 Q. Sorry. Okay. Are there other elements in your
6 opinion that go into sea worthiness as to the vessel
7 itself?
8 A. Yes. To the -- well, again we go back to the
9 autopilot, it's safety. We go back to the vessel's
10 equipment should be working properly. The vessel's
11 equipment does not work properly, it technically makes it
12 unseaworthy. Unseaworthy is very broad term that entails
13 a lot of things. And I had a definition of unseaworthy
14 in my papers, but I don't have it with me.
15 Q. Okay. All right. The report that you have
16 authored in this case, have you been given an opportunity
17 to testify about all of your findings in this case?
18 A. Yes.
19 Q. Okay. Having sat through a deposition here
20 today, are there any findings or conclusions that you
21 wish to change?
22 A. The only thing I think I said when we were
23 talking about the Rose Point, that the vessel didn't go
24 left. But looking at this now and recalling it from when
25 I read it Monday and also reviewing it yesterday, it does

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1 go left.
2 Q. Okay. Now the Rose Point that you were
3 testifying about, what was that? What did you say?
4 A. That was the one -- I don't know the number --
5 the number on that one, but it had like a chart and it
6 was like a blue vessel moving through the thing and it
7 showed you the course, the speed and that's where I got
8 the 5.2 knots and... But at that -- in that one I did
9 not see a left turn.
10 Q. Okay.
11 A. That's why I said that earlier.
12 Q. Okay. But now -- now in reviewing the plotted
13 points.
14 A. Yeah, it definitely went left. But, like I
15 say, it was going left from the minute it got underneath
16 the Jordan Bridge.
17 Q. All right. Okay.
18 A. Because if you look at the -- Stephenson drew
19 lines and these are the yellow lines. It was heading
20 directly for the west abutment of the bridge not to the
21 center. And then when it got to 1626 it made -- it
22 veered about ten, 15 degrees left, which headed right
23 towards the location of the allision.
24 Q. Okay. And there was some questions earlier
25 about operating a light tug and that's just a tug without

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<p>Page 149</p> <p>1 a barge; right?</p> <p>2 A. Right, uh-huh.</p> <p>3 Q. Okay. And so even when you're operating a</p> <p>4 light tug, and that is one without a barge, do you use</p> <p>5 autopilot then?</p> <p>6 A. Sometimes depending on where you are, how long</p> <p>7 of a trip it is. If I'm just running from say like New</p> <p>8 York Harbor in the Kills, which is a narrow, no, you</p> <p>9 would be on hand steering the whole time because of the</p> <p>10 traffic.</p> <p>11 When up get out into sort of open waters, even</p> <p>12 though you're in the river, like the Hudson River, the</p> <p>13 lower end, it's pretty wide open. With a light tug I'm</p> <p>14 going up to Newburg say to pick up a barge, I would be on</p> <p>15 automatic pilot going up to the GW Bridge till I got to</p> <p>16 where the river narrowed.</p> <p>17 Q. All right. Just to be clear, when you're</p> <p>18 transitioning the bridge, that's hand steering only;</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. All right. All right, Captain. I think</p> <p>22 those are all the questions. I'm not sure if there will</p> <p>23 be redirect, but I appreciate your time and thank you for</p> <p>24 clearing those up for me.</p> <p>25 A. Thank you.</p>	<p>Page 151</p> <p>1 probably allow you to come back and inspect the tug, they</p> <p>2 made a motion anyway. But whatever.</p> <p>3 Do you remember July 28th there was a date of</p> <p>4 inspection in New York?</p> <p>5 A. Yes. I couldn't make it.</p> <p>6 Q. But did your attorneys tell you about it?</p> <p>7 A. Yes.</p> <p>8 Q. When did they tell you about it?</p> <p>9 A. The 27th, 26th.</p> <p>10 Q. Were you out of town?</p> <p>11 A. No, I was on another case.</p> <p>12 Q. Where?</p> <p>13 A. Here.</p> <p>14 Q. Where is here?</p> <p>15 A. Florida, Melbourne, Florida.</p> <p>16 Q. Do you not have the name of the case?</p> <p>17 A. Dufrein Wade (phonetic).</p> <p>18 Q. Is that on your list?</p> <p>19 A. No. I haven't done anything. I've only done a</p> <p>20 report with it.</p> <p>21 Q. Were you at a deposition on the 28th?</p> <p>22 A. No. I was in -- I had a zoom meeting on my</p> <p>23 report. My report was due the 29th.</p> <p>24 Q. So you could have flown up for the 28th and</p> <p>25 gone to the inspection; correct?</p>
<p>Page 150</p> <p>1 MR. RODGERS: Yeah, I have redirect.</p> <p>2 REDIRECT EXAMINATION</p> <p>3 BY MR. RODGERS:</p> <p>4 Q. Did you inspect the tug?</p> <p>5 A. Not yet.</p> <p>6 Q. Okay. We've got information that you'll be</p> <p>7 there on August 18th?</p> <p>8 A. Yes.</p> <p>9 Q. At 1 p.m., okay, in Staten Island; right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Now the first time I think it was early July,</p> <p>12 maybe it was late June there was a scheduled tug</p> <p>13 inspection in Charleston. Do you remember that?</p> <p>14 A. Yes.</p> <p>15 MR. JETT: Objection.</p> <p>16 BY MR. RODGERS:</p> <p>17 Q. And there was a problem with your flight. Do</p> <p>18 you remember that?</p> <p>19 A. Yes.</p> <p>20 Q. And then you might recall that -- did you know</p> <p>21 your attorneys made a motion to compel an inspection of</p> <p>22 the tug?</p> <p>23 A. No.</p> <p>24 Q. All right. I'll represent to you that they</p> <p>25 did. And although we had told them that we would</p>	<p>Page 152</p> <p>1 MR. JETT: Objection.</p> <p>2 BY MR. RODGERS:</p> <p>3 Q. Right? But you made a priority for another</p> <p>4 case; is that fair to say?</p> <p>5 MR. JETT: Objection. Objection to this line</p> <p>6 of questioning. This has been resolved by the court</p> <p>7 and we'll go to the inspection on Monday.</p> <p>8 MR. RODGERS: We'll see. We'll see. I'm just</p> <p>9 trying to find out what happened in case the issue</p> <p>10 comes up again.</p> <p>11 MR. JETT: Well, we had agreed to be there --</p> <p>12 hey, we agreed to be there.</p> <p>13 MR. RODGERS: No speaking objection. I'm going</p> <p>14 to finish because you brought up inspection.</p> <p>15 BY MR. RODGERS:</p> <p>16 Q. Did you -- you weren't out of the country,</p> <p>17 right, on the 28th?</p> <p>18 A. Nope.</p> <p>19 Q. Okay. You weren't in the hospital; correct?</p> <p>20 A. No.</p> <p>21 Q. Did your attorneys tell you they had made a</p> <p>22 motion to the court to compel us to make that tug</p> <p>23 available?</p> <p>24 MR. JETT: Objection, asked and answered.</p> <p>25 MR. RODGERS: You can answer again.</p>

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<p style="text-align: right;">Page 153</p> <p>1 A. For which time, this time?</p> <p>2 BY MR. RODGERS:</p> <p>3 Q. For the 28th.</p> <p>4 A. Not that I recall. All I know is it was very</p> <p>5 late notice and I had things already I had to do.</p> <p>6 Q. Late notice from your attorneys?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 MR. JETT: From Carver.</p> <p>10 BY MR. RODGERS:</p> <p>11 Q. On August 18th are you going to -- and again</p> <p>12 you have to understand, Captain, this is being litigated</p> <p>13 continuously, this issue. So I just need to know are you</p> <p>14 flying up the night before on the 17th?</p> <p>15 A. No, the morning of the 18th.</p> <p>16 Q. All right. And if for some reason, as you know</p> <p>17 better than anybody, there's an operational change where</p> <p>18 suddenly it's not the 18th but it's, I don't know, the</p> <p>19 morning of the 19th, do you have anything in your</p> <p>20 schedule that would prevent you from staying over and</p> <p>21 seeing it on the 19th?</p> <p>22 A. No.</p> <p>23 Q. On the Simrad, had you used a Simrad before on</p> <p>24 your oil barge tug?</p> <p>25 A. Not that I recall.</p>	<p style="text-align: right;">Page 155</p> <p>1 correct?</p> <p>2 A. Well, yes. My company sent me that information</p> <p>3 in their SMS.</p> <p>4 Q. So you followed the SMS of Exxon?</p> <p>5 A. Yes. And the CFR, they reference the CFR.</p> <p>6 Q. Narrow waters, would you agree that you and</p> <p>7 Captain Stephenson in this instance just disagree on the</p> <p>8 issue of narrow waters in the Elizabeth River on that</p> <p>9 particular day of the incident?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. On the pilots -- I may have missed</p> <p>12 something. The question, if I recall, your counsel asked</p> <p>13 you was dealing with pilots and use of autopilot; right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And was your testimony that the</p> <p>16 situation with the pilot is different than a situation</p> <p>17 such as --</p> <p>18 THE COURT REPORTER: Such as what, I'm sorry?</p> <p>19 MR. RODGERS: Such as the situation with the</p> <p>20 Elizabeth River and I'll add on the day of the</p> <p>21 incident.</p> <p>22 A. I don't understand the question.</p> <p>23 BY MR. RODGERS:</p> <p>24 Q. All right. I'll withdraw it since you don't</p> <p>25 understand it. You said that you looked at the actual</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. So had you ever -- how did you get a copy of</p> <p>2 the Simrad manual? Did your attorney send it to you?</p> <p>3 A. It was part of the data -- the discovery. I</p> <p>4 don't know.</p> <p>5 Q. Okay. Had you seen it before?</p> <p>6 A. What?</p> <p>7 Q. Ever. Had you ever seen a Simrad manual before</p> <p>8 that?</p> <p>9 A. No.</p> <p>10 Q. Okay. Had you ever referred to the -- to the</p> <p>11 manufacturer's manual when making a decision in a</p> <p>12 navigational sense when or when not to use an autopilot?</p> <p>13 A. Not that I can recall.</p> <p>14 Q. So if the Simrad -- if your -- when you were</p> <p>15 dealing with oil barges and as a tug captain or mate,</p> <p>16 would you go to the manufacturer's manual to determine</p> <p>17 whether you could use the autopilot in inland waters with</p> <p>18 an oil barge?</p> <p>19 A. I couldn't anyway.</p> <p>20 Q. No, but would you go to that manual to see what</p> <p>21 they said about using it in inland waters?</p> <p>22 A. If it said that, I would have read it. But I</p> <p>23 go to the manual to properly use the autopilot.</p> <p>24 Q. Okay. And you go to the CFR or other laws to</p> <p>25 decide whether you lawfully can use the autopilot;</p>	<p style="text-align: right;">Page 156</p> <p>1 Rose Point; correct?</p> <p>2 A. Yes.</p> <p>3 Q. You didn't see any hard left on the actual Rose</p> <p>4 Point; correct?</p> <p>5 A. It didn't appear to be, no.</p> <p>6 Q. And you didn't note in your report that you saw</p> <p>7 any left turn; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And that's what's in your report; right?</p> <p>10 A. I don't think it says anything about not going</p> <p>11 left.</p> <p>12 Q. It doesn't say it went left or hard left;</p> <p>13 right?</p> <p>14 A. Right.</p> <p>15 Q. And --</p> <p>16 A. It just says he had a hard time I think</p> <p>17 shifting over to NFU.</p> <p>18 Q. Okay. And you've been shown Captain</p> <p>19 Stephenson's diagram with his particular points and</p> <p>20 lines; correct?</p> <p>21 A. Yes.</p> <p>22 Q. So you're not basing -- the testimony you just</p> <p>23 made -- excuse me, that you just said regarding whether</p> <p>24 it went left or not, it's not based on the Rose Point,</p> <p>25 it's based solely on Captain Stephenson's photo and</p>

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<p>Page 157</p> <p>1 notations on page 16 of his report; correct?</p> <p>2 A. Yes. Which I think are based on AIS positions.</p> <p>3 Q. Well, you may think that, but you're basing</p> <p>4 your testimony on that particular diagram created by</p> <p>5 Captain Stephenson; correct?</p> <p>6 A. Yes.</p> <p>7 Q. You would agree that the evidence in the case</p> <p>8 regarding the track is the Rose Point evidence; correct?</p> <p>9 A. That's one of them, yes.</p> <p>10 Q. Well, that's the main evidence; correct? It's</p> <p>11 not like your opinion and your drawing, it's not Captain</p> <p>12 Stephenson's drawing, right, it's the Rose Point chart?</p> <p>13 A. It's the Rose Point --</p> <p>14 Q. Right.</p> <p>15 A. It's the Rose Point video.</p> <p>16 Q. That's the actual evidence in the case;</p> <p>17 correct?</p> <p>18 A. Yes, that I received.</p> <p>19 Q. Based on that, your testimony earlier today,</p> <p>20 based on that was that there -- there does not appear to</p> <p>21 be any hard left turn; correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now if you look at page -- I'm going to read</p> <p>24 from Captain Stephenson's report on where one-man bridge</p> <p>25 operations are allowed, okay. I'm just going to -- I'm</p>	<p>Page 159</p> <p>1 that statement that McAllister is agreeing with Captain</p> <p>2 Stephenson? You do disagree with Captain Stephenson.</p> <p>3 Are you also disagreeing with McAllister on that</p> <p>4 condition?</p> <p>5 A. Of a one-man operation in the wheelhouse?</p> <p>6 Q. Yes.</p> <p>7 A. In a closed quarters situation? I don't</p> <p>8 have -- I can't remember what it said.</p> <p>9 Q. Well, are you disagreeing with McAllister?</p> <p>10 A. I'm disagreeing with it if it says in a closed</p> <p>11 quarters situation.</p> <p>12 Q. Are you disagreeing with Beso Towboat?</p> <p>13 A. I'm disagreeing with all of them if that's what</p> <p>14 they say.</p> <p>15 Q. Okay. Now -- and you agree that your</p> <p>16 experiences with oil barges and tugs; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Is Cook's Inlet a narrow waterway?</p> <p>19 A. No.</p> <p>20 Q. It's a big bay; right?</p> <p>21 A. Yes. It's a big inlet.</p> <p>22 Q. And that's the only time you pushed or towed a</p> <p>23 barge that wasn't an oil barge that you can recall?</p> <p>24 A. Yes.</p> <p>25 Q. But it wasn't in a river such as the Elizabeth</p>
<p>Page 158</p> <p>1 just going to read where he surveyed certain tug</p> <p>2 companies who agreed with him on one-man bridge</p> <p>3 operations. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. All right. He lists McAllister Towing. Are</p> <p>6 you agreeing with McAllister Towing's policy allowing</p> <p>7 one-man bridge operations vis-a-vis the lookout issue?</p> <p>8 A. No.</p> <p>9 Q. Okay. Well, they're agreeing with Captain</p> <p>10 Stephenson. Are you agreeing with McAllister?</p> <p>11 MR. JETT: Hold on. What page are we on?</p> <p>12 Where are you, Jim?</p> <p>13 MR. RODGERS: Sorry, 21.</p> <p>14 BY MR. RODGERS:</p> <p>15 Q. So I'll read it with the following companies</p> <p>16 have one-man bridge operations aboard tugs when</p> <p>17 conditions permit. The first name is McCallister. Okay?</p> <p>18 MR. JETT: I'm going to put it in front of the</p> <p>19 witness.</p> <p>20 A. Okay.</p> <p>21 BY MR. RODGERS:</p> <p>22 Q. As you sit here today are you disagreeing with</p> <p>23 McAllister what their policies permit?</p> <p>24 A. When and where conditions permit it.</p> <p>25 Q. I understand. But are you disagreeing with</p>	<p>Page 160</p> <p>1 River; right?</p> <p>2 A. No. But it was inland. It was coming into</p> <p>3 Cook's Inlet can be very rough, which it was. And I</p> <p>4 wasn't for this, I wasn't on hand steering -- I mean, I</p> <p>5 wasn't on autopilot.</p> <p>6 Q. Okay. But you agree that's not -- that's not a</p> <p>7 to use your term a narrow waterway --</p> <p>8 A. Probably not.</p> <p>9 Q. -- whether it's in --</p> <p>10 A. I'm sorry, my fault.</p> <p>11 Q. My fault, sorry.</p> <p>12 A. It's not a narrow waterway initially for the</p> <p>13 first ten, 15 miles until you get above Homer.</p> <p>14 Q. Okay. So you never been -- you never used</p> <p>15 autopilot or pushed or towed a non oil barge in a</p> <p>16 waterway such as Elizabeth River; is that a fair</p> <p>17 statement?</p> <p>18 A. Yes.</p> <p>19 Q. Now you're choosing today not to accept that</p> <p>20 the 1292, the second 1292 and the facts that are listed</p> <p>21 in there; is that correct?</p> <p>22 MR. JETT: Object to the form.</p> <p>23 A. 2692?</p> <p>24 BY MR. RODGERS:</p> <p>25 Q. Yeah. What did I say?</p>

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<p style="text-align: right;">Page 161</p> <p>1 A. 12.</p> <p>2 Q. Is that what you're saying today, that you're</p> <p>3 not accepting that?</p> <p>4 A. No.</p> <p>5 Q. Okay. But you're accepting -- if I understand</p> <p>6 you correctly, it's in your report, you're accepting an</p> <p>7 incident report where it says on your page five:</p> <p>8 "Incident, Norfolk, Virginia, I'm reading from your</p> <p>9 report, Mate James Morrissey reports the autopilot was</p> <p>10 not completely turned off, he was able to correct and</p> <p>11 switch back over to hand steering and began backing on</p> <p>12 the Weeks 281 Barge, sorry reporter, and maneuvered the</p> <p>13 barge alongside fendering on the north of PBL RR Bridge,</p> <p>14 photo taken. Proceed slowly away from bridge." Do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. So you're accepting that, right, to get to your</p> <p>18 conclusion that's in your finding number four; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And doesn't the 2692 essentially say the</p> <p>21 same thing?</p> <p>22 MR. JETT: Objection.</p> <p>23 A. It might be, but this was the exact statement</p> <p>24 from Morrissey.</p> <p>25</p>	<p style="text-align: right;">Page 163</p> <p>1 A. I don't know. I got to read the -- I don't</p> <p>2 have the 2692.</p> <p>3 Q. Well, I think I made my point.</p> <p>4 A. If it says the exact same thing, then I do</p> <p>5 agree with that, but I don't think it says the exact same</p> <p>6 thing.</p> <p>7 Q. And that's not hard over, right, Mate Morrissey</p> <p>8 eventually -- his statement -- his eventual statement and</p> <p>9 proof is that he didn't go hard over, he forgot to turn a</p> <p>10 switch off; correct?</p> <p>11 A. Yes.</p> <p>12 MR. JETT: Objection.</p> <p>13 A. Well, this doesn't say he went hard over.</p> <p>14 BY MR. RODGERS:</p> <p>15 Q. No, I know it doesn't. That's the point. It</p> <p>16 doesn't say hard over in the entry that you cited. It</p> <p>17 says the autopilot is not completely turned off. Do you</p> <p>18 see that?</p> <p>19 A. Yes.</p> <p>20 Q. And that's your June 15th, 2024, logbook entry</p> <p>21 that you cited?</p> <p>22 A. Yes.</p> <p>23 MR. JETT: Objection.</p> <p>24 BY MR. RODGERS:</p> <p>25 Q. On page five; correct?</p>
<p style="text-align: right;">Page 162</p> <p>1 BY MR. RODGERS:</p> <p>2 Q. Okay. And that supports that he failed to --</p> <p>3 that he failed to in your words that he: "Failed to</p> <p>4 properly disengage the autopilot and did not switch to</p> <p>5 manual steering, non-follow-up mode." Do you see that?</p> <p>6 A. Right.</p> <p>7 Q. In the report in number four.</p> <p>8 A. In number four?</p> <p>9 Q. Yeah, your finding number four.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And is it your testimony today that</p> <p>12 you're basing at least in part number four on the entry</p> <p>13 that I just read to you on page --</p> <p>14 A. Yes.</p> <p>15 Q. Yes?</p> <p>16 A. "Reports the autopilot was not completely</p> <p>17 turned off, he was able to correct and switch back over</p> <p>18 to hand."</p> <p>19 Q. Okay. So I'm a little confused why you</p> <p>20 wouldn't accept a 2692 amended one put in by the company</p> <p>21 which says essentially the same thing which if it's false</p> <p>22 is a felony.</p> <p>23 So I'm asking you why you're not accepting that</p> <p>24 where you accepted apparently a log entry which says</p> <p>25 essentially the same thing. Would you not agree?</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Correct.</p> <p>2 Q. Of your report?</p> <p>3 A. Correct.</p> <p>4 Q. And then that's in part how you made your</p> <p>5 determination in your finding four; correct?</p> <p>6 MR. JETT: Objection.</p> <p>7 A. Yeah. I think I've answered all of this.</p> <p>8 MR. JETT: Yeah.</p> <p>9 BY MR. RODGERS:</p> <p>10 Q. You might have, but your lawyer has brought you</p> <p>11 back to talk about why the 1292 is not believable and I</p> <p>12 have to follow-up because he asked you that. I'm not</p> <p>13 sure what he discussed with you and I'm not allowed to</p> <p>14 ask.</p> <p>15 But the logbook entry that you cited and quoted</p> <p>16 is in part the basis for you putting in the first part of</p> <p>17 point four of your finding: "The officer of the watch</p> <p>18 Captain James Morrissey failed to properly disengage the</p> <p>19 autopilot and did not switch the manual steering</p> <p>20 non-follow-up mode." Do you see that?</p> <p>21 A. Yes.</p> <p>22 MR. JETT: Objection. I think we covered this.</p> <p>23 BY MR. RODGERS:</p> <p>24 Q. Correct?</p> <p>25 A. Say that again.</p>

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<p style="text-align: right;">Page 165</p> <p>1 Q. And you stood by that; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. That doesn't say anything about the</p> <p>4 autopilot failing mechanically, electronically. All I'm</p> <p>5 asking you is what it says not any other explanation. It</p> <p>6 doesn't say that in your point four; correct?</p> <p>7 MR. JETT: Objection. He's not been designated</p> <p>8 as an autopilot expert.</p> <p>9 MR. RODGERS: Exactly. Well, that's not the</p> <p>10 point. You've asked him something to change his</p> <p>11 testimony and he's under oath and he's now changed</p> <p>12 it after the break and I want to make sure that he's</p> <p>13 clear as to what his statement is in the report and</p> <p>14 what his testimony is.</p> <p>15 MR. JETT: I think you've adequately asked him</p> <p>16 that.</p> <p>17 BY MR. RODGERS:</p> <p>18 Q. I'm asking are you standing by your part four?</p> <p>19 MR. JETT: He's testified repeatedly that he's</p> <p>20 standing by everything in his report and it's not</p> <p>21 going to be amended.</p> <p>22 MR. RODGERS: You know, Zach, your firm has</p> <p>23 brought me to court over speaking objections. It's</p> <p>24 a little bit hypocritical. So can I just finish the</p> <p>25 question and let the captain go? I didn't ask you</p>	<p style="text-align: right;">Page 167</p> <p>1 redirect, redirect. I don't think you can, Zach. I</p> <p>2 think we can let the captain go. You tell me. I'm</p> <p>3 done unless there's some more redirect.</p> <p>4 MR. JETT: We'll go off the record for a</p> <p>5 moment.</p> <p>6 (A discussion was held off the record.)</p> <p>7 MR. JETT: We're done. No redirect.</p> <p>8 MR. RODGERS: Okay.</p> <p>9 MR. JETT: We will read and sign.</p> <p>10 THE COURT REPORTER: And would you like a copy?</p> <p>11 MR. JETT: I would like a copy. I'll take a</p> <p>12 condensed PDF with any exhibits they send you.</p> <p>13 THE COURT REPORTER: I don't think we marked</p> <p>14 any. I mean, he showed them, but I don't think we</p> <p>15 marked them.</p> <p>16 MR. RODGERS: Yeah, reporter. You'll do my</p> <p>17 expedited? I don't know if we marked it. We</p> <p>18 referred to prior marked exhibits so I don't think</p> <p>19 we need to.</p> <p>20 THE COURT REPORTER: Okay. Yeah, I was going</p> <p>21 to say I don't think we marked any for this</p> <p>22 deposition.</p> <p>23 MR. RODGERS: No, we previously marked.</p> <p>24 MS. WERNER: They were previously marked in</p> <p>25 Brian Moore's deposition.</p>
<p style="text-align: right;">Page 166</p> <p>1 to do the follow-up and have his testimony changed.</p> <p>2 So I want him -- to be fair to you, Captain, you're</p> <p>3 the one under oath, not your lawyer and I just want</p> <p>4 to make sure that you're clear with your report.</p> <p>5 MR. JETT: The same objection.</p> <p>6 BY MR. RODGERS:</p> <p>7 Q. Point four, page 12.</p> <p>8 MR. JETT: Asked and answered.</p> <p>9 BY MR. RODGERS:</p> <p>10 Q. You're leaving that as it is; correct?</p> <p>11 MR. JETT: Same objection, asked and answered.</p> <p>12 A. Yes.</p> <p>13 BY MR. RODGERS:</p> <p>14 Q. Okay. And that is consistent with the actual</p> <p>15 Rose Point chart that you saw in the materials you</p> <p>16 reviewed; correct?</p> <p>17 MR. JETT: Objection.</p> <p>18 BY MR. RODGERS:</p> <p>19 Q. In other words, there's no hard over on the</p> <p>20 original Rose Point chart, you did not see that on the</p> <p>21 chart; correct?</p> <p>22 MR. JETT: Objection.</p> <p>23 A. Correct.</p> <p>24 MR. RODGERS: Okay. All right. Again, I thank</p> <p>25 you. I don't know if he's going to ask you</p>	<p style="text-align: right;">Page 168</p> <p>1 MR. JETT: I don't know if you all intended to</p> <p>2 mark his report that was referred to or not.</p> <p>3 MR. RODGERS: Yeah, I didn't mark it. Are you</p> <p>4 marking it? I guess we should; right?</p> <p>5 MR. JETT: I mean, we can just mark it as late</p> <p>6 Exhibit Number 1 to this deposition or whatever you</p> <p>7 want to do, that's fine.</p> <p>8 MR. RODGERS: All right.</p> <p>9 (Coeymans Marine Exhibit No. 1 was Marked for</p> <p>10 Identification.)</p> <p>11 (The reading and signing of the deposition were</p> <p>12 reserved.)</p> <p>13 (The deposition was concluded at 5:15 p.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

